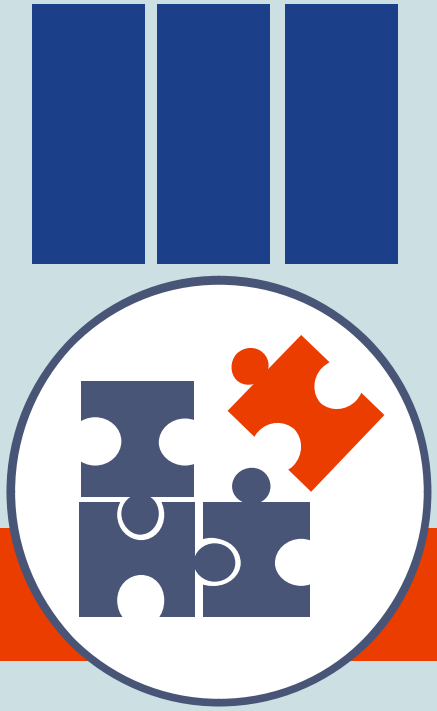


Employee & Labor Relations Guide Book

June 2008

U.S. Department of Agriculture

TABLE OF CONTENTS

1 Forward -

The Employee & Labor Relations Guide Book is meant to assist managers in dealing with those problem situations that arise in the workplace. Before taking any action, the manager should consult with his or her servicing Employee & Labor Relations Specialist.

2 Human Resources – Employee/Labor Relations Services

Employee Relations Services
• Guidance on employee performance and conduct issues • Incentive Awards Program • Leave Administration • OWCP (Work-Related Injury) • Retirement Counseling • Transit Subsidy Benefits • Voluntary Leave Transfer program
Labor Relations Services
• Advice and guidance to manager/supervisors
Workplace Violence Prevention & Response Program
• Guidance on handling threats, intimidation, volatility, talk of suicide, and other conduct that causes fear and/or disruption in the workplace • Coordination of threat/risk assessments • Advice on defusing aggression and increasing workplace safety • Access to services of psychiatrists and psychologists for medical opinions, advice, and assistance in risk assessments • Assistance in planning and carrying out interventions • Specialized assistance for dealing with volatile situations involving producers, ranchers, loan applicants and borrowers • Training via teleconference or on site on various workplace violence topics
Health Unit – KC Complex only
• Blood Drives • Emergency Response System • Health Screenings • Lunch and Learn Seminars • Health Services

3 Performance and Conduct:

Introduction/Overview:

Correcting Employees' Performance and Conduct

What is the purpose of discipline? Why do I have to carry it out?

These are questions every supervisor has asked at one time or another, and they have clear and businesslike answers.

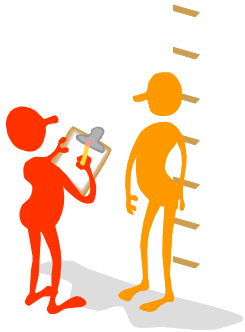
In an environment where all workers were highly motivated, trustworthy, capable, congenial and selfless, disciplinary action would perhaps be unnecessary. However, it's an imperfect world. Though most employees conform to rules and regulations and give a full day's work for their pay of their own accord, there still remain those few who do not, cannot or will not. This small fraction of employees requires closer supervision and, sometimes, corrective measures to ensure they do not stray over the boundary into unacceptable conduct.

Corrective action is noted by all, not just those immediately concerned. Actions taken fairly, rapidly and correctly serve as examples to others who might be tempted to test the boundaries of acceptable behavior. Such actions reinforce the good habits of those who are not conduct problems. The reputation and integrity of the Federal service as a whole depends on public trust, on the taxpayers' perception that Government workers *do* conform to businesslike rules and *are* accountable for their performance and conduct. If this trust is betrayed, if taxpayers lose confidence in the integrity and ability of Federal workers, the Government will cease to function.

This is why discipline is sometimes necessary. And, in order to avoid the perception that such discipline is merely imposed from above, it must come from the concerned supervisor who knows the problems and has the best chance of correcting them at the lowest level. It is a difficult job, which only those most concerned are properly equipped to do. It is the exercise of disciplinary authority over other employees which distinguishes supervisory responsibility from the lesser responsibilities connected with just getting the job done.

3 Performance and Conduct (Continued):

Introduction/Overview (Continued):



Actions Based on Unacceptable Performance

When performance problems are identified, counseling regarding the deficiencies should begin with the goal of aiding the employee to bring performance back up to an acceptable level. Before effective counseling can begin, you have to analyze the performance problem. In other words, you must determine if it is a "can't do" or a "won't do" situation.

- **Can't do**

  If the employee lacks the skill or specific knowledge required or is no longer able to do the job, you have a "can't do" problem and need to determine the following:

  - Did the employee do the job in the past?
  - Does the employee have the potential to perform at a fully successful level?
  - Has the employee forgotten how to do certain tasks?
  - How often is the skill or knowledge used?

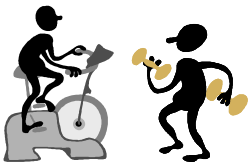
  Possible alternatives in "can't do" situations include providing the employee with written instructions, assigning an on-the-job coach, providing additional formal training, restructuring the job temporarily or increasing supervision. If the situation results from physical or other limitations, reassignment to a different type of work may resolve the problem. In some instances, you may want to make the employee aware of the Employee Assistance Program. If the situation is the result of an employee's selection for a position beyond his or her ability, reassignment may be an alternative.

- **Won't do**

  If the employee has attitude problems, lacks motivation, or has external obstacles to performing, you may have a "won't do" situation and should consider the following:

  - Does the employee find nonperformance rewarding because more attention is received for negative behavior than for positive behavior?
  - Does the employee seem unconcerned about performing acceptably?
  - Does the employee lack motivation because the job is repetitive and no longer challenging?

3 Performance and Conduct (Continued):



Introduction/Overview (Continued):

The solutions to "won't do" problems are often more complex and difficult. If the failure to perform is willful or intentional, a disciplinary action may be more appropriate than a performance-based action. If a personality conflict exists, reassignment may be an alternative. If the problem is a general distrust of authority figures, reassignment would not solve the real problem.

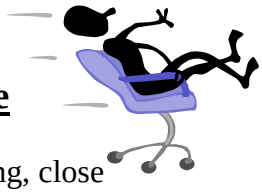
Motivational problems may be solved by changing a work assignment or by restructuring the way the work is accomplished. If the employee is having personal problems, advise the employee of the Employee Assistance Program. While you are expected to consider corrective solutions such as those listed, you are not expected to tolerate "won't do" situations that result in gross negligence, insubordination, or morale problems.

Dealing With Unacceptable Performance

The reasons for unacceptable performance are as varied as the number of employees with performance problems. Each case must be analyzed to determine the best approach to assist that employee to perform acceptably. Communicating with the employee is most important. Discussion of the performance deficiencies must be timely and rational, with clear direction given by you and assurance that the expectations are understood by the employee.

Your day-to-day efforts to help the employee improve performance deficiencies should be noted as well as the employee's failure to perform acceptably, if that is the case. Those significant patterns or indications of unacceptable performance must be shared with the employee. These significant patterns include relevant samples of an employee's work which are indicative of the employee's poor performance.

The objective when dealing with a case of unacceptable performance continues to be to assist and encourage the employee to improve to an acceptable level so that the mission of the service can be accomplished. However, if day-to-day efforts do not correct the unacceptable performance within a reasonable period of time, a formal counseling session establishing a formal opportunity to improve should be given.



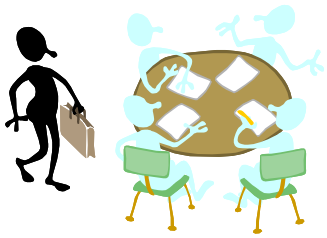
Removals and Reductions-In-Grade For Unacceptable Performance

If after taking steps to deal with an employee with performance problems (counseling, close supervision, training if needed, etc.), the employee continues to produce unacceptable work in at least one critical element of the job, it may be appropriate to take a formal action based on unacceptable performance under Part 432 of 5 CFR. An employee may be reduced in grade or removed at any time during the performance appraisal cycle if the performance in any one or more critical elements of the job becomes unacceptable, but only after having been given an opportunity to improve.

3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) 1/

Consult Your Human Resources Office Before Beginning This Formal Procedure



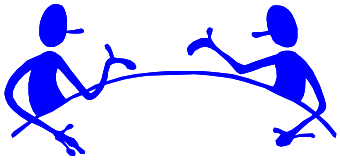
Establishing an opportunity period requires a formal counseling session documented in an "Opportunity To Improve (OTI)." The length of the opportunity period depends on the employee's job; the period can vary but should not be less than 60 days. This process requires specific documentation of the unacceptable performance.

The overall development of a performance-based action is of primary importance in preparing the action. The preparation should begin with an assurance that the employee with the performance problem is fully aware of what is required. While this requirement may legally be met with the receipt by the employee of the critical elements/performance standards, expectations concerning specific assignments should also be documented. For example, if the problem concerns timeliness, counseling documentation should clearly show that the employee was fully aware of what the time expectations were. A case is stronger when it can be shown that the employee was given specific directions as to what was expected on a specific assignment.

Management decides what is expected on a specific assignment and management decides what is important in an assignment. Your records should clearly show how management directed an assignment to be completed. Otherwise, managers may be second-guessed by third parties as to what should have been done on an assignment.

After it has been shown that the employee was fully aware of the expectations, it must be shown that there is a repetition or pattern of failure to such a degree that an element was not being performed successfully. A performance deficiency may represent unacceptable performance in more than one critical element. In such a case it would be best to zero in on the critical element that best exemplifies the relationship of failure to the accomplishment of the job.

Formal Counseling and Opportunity to Improve Letter



The formal counseling session is very important in that it serves as the foundation for all future action. Therefore, thorough preparation is vital. Employee/Labor Relations Specialists should be involved in your preparations.

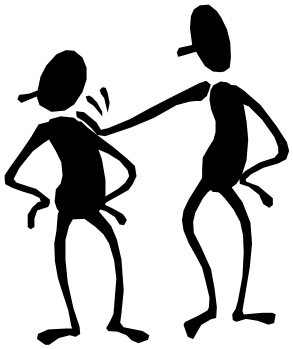
1/ 5 CFR 432 applies only to Federal employees. However, the basic principles in handling performance-related issues are applicable to county office employees, although final appeal procedures under 5 CFR 432 do not apply.

3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) (Continued)

During the counseling session, or shortly thereafter, a letter must be given to the employee to establish the formal opportunity period to improve to the fully successful level. The letter must contain the following:

- The critical element(s) and performance standard(s) in which the employee's performance is unacceptable and the exact nature of the deficiencies. Examples of unacceptable performance must be included.
- The improvements expected. Provide practical advice on how the employee can meet the critical elements, such as references to use and improved work habits.
- The fact that failure to become acceptable in one or more critical elements may result in a proposal to separate the employee from the position or agency.
- The specific period of time in which the employee will be given the opportunity to demonstrate acceptable performance. Consideration should be given to complexity of duties, length of experience in position, prior performance record and training.
- The fact that you are committed to work with the employee. List what efforts you will make to help the employee. (You must follow through on commitments made.)



Other elements that may be included in the OTI letter are: reference to previous counseling sessions, past efforts made to assist the employee to improve, your availability to answer the employee's questions, reassurance that the employee is not marked for failure and commitment to a real opportunity for improvement.

Even though the process is now formalized, the objective is still to assist and encourage the employee to improve to an acceptable level so that the mission of the Agency can be accomplished.

3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) (Continued)

Sample Opportunity to Improve (OTI) Letter

USDA

United States Department of Agriculture

Farm and Foreign Agricultural Services

Insert Organizational Entity Name and Address, as applicable

TO:	(Employee)
FROM:	(Supervisor)
SUBJECT:	Performance Improvement Plan
Background	This is to inform you that your performance is unacceptable in [#] critical element(s) of your position. The critical element(s) and the performance standard(s) for each element that was discussed and examples of your unacceptable performance follow.
Critical element	[Title of critical element]
Standard	[State the performance standard in its entirety.]
Examples	[Should be concise, direct and easy to understand. Should include information on what the employee did or did not do with reference to specific dates, places, cases, etc., and what the employee should have done. Should reference required procedures, counseling or instructions previously given.]
Critical element	[List each critical element, standard and examples of the unacceptable performance separately.]
Examples	
Assistance	[Include advice or guidance as to what must be done to bring the performance up to an acceptable level. This could include such things as how time would best be spent (prioritizing and planning), suggested sources of assistance and information, ways or techniques of performing work, formal or informal training planned, etc. Describe what supervisory assistance and support management will provide the employee; i.e., specific work reviews and/or counseling sessions planned, etc.]
	If you are experiencing difficulties which fall under the purview of the Employee Assistance Program, you should contact an Employee Assistance Counselor at 888-290-4327. In the meantime, I will continue to hold you responsible for your performance.

USDA is an Equal Opportunity Provider and Employer.

3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) (Continued)

Sample Opportunity to Improve (OTI) Letter

Page 2

Action required	Beginning on the date you receive this letter, you will be given ninety (90) calendar days during which you will have the opportunity to demonstrate that you can perform at the fully successful level with respect to the above critical element(s) and performance standard(s). To obtain a fully successful level of performance you must meet all of the performance standards listed in the critical element(s) above.
Evaluation	At the end of the ninety (90) calendar day period, I will evaluate your work and make a determination whether your performance during the period has reached the level required for retention in your position. You will be informed soon thereafter of whatever further action is to be taken.
Failure to improve	Your failure to improve to the fully successful level may result in either a proposal to remove you from the service or reduce you in grade.
Questions	If you have any questions on this matter, feel free to contact me. I am available to answer your questions and to assist you in improving your performance during this period.

3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) (Continued)

Sample Letter Informing Employee of Improved Performance

USDA

United States Department of Agriculture

Farm and Foreign Agricultural Services

Insert Organizational Entity Name and Address, as applicable

TO: (Employee)

FROM: (Supervisor)

SUBJECT: Performance Improvement

Background — On [insert date], you were notified in writing that your performance was unacceptable in the following critical element(s). You were also informed that you would be given an opportunity to demonstrate fully successful performance.

Critical element — [State title of critical element.]

Improved performance — Based on my evaluation of your performance in the aforementioned critical element(s), I am pleased to inform you that your performance has reached the level required for retention in your position. Accordingly, no further action will be taken at this time to remove you from the service or to reduce you in grade for your unacceptable performance.

Future — Your performance, of course, must continue to be acceptable. In accordance with the Code of Federal Regulations, if your performance again becomes unacceptable before [calendar date that is one year after the date on which the initial opportunity period began], I may recommend your removal or reduction in grade without affording you an additional opportunity to improve your performance. I, therefore, encourage you to continue your efforts.

Questions — Please let me know if you have any questions concerning this matter.

USDA is an Equal Opportunity Provider and Employer.

3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) (Continued)

Considerations at the End of the Opportunity to Improve Period

At the end of the specified period a determination must be made as to whether sufficient improvement has been made and, if not, what the course of action will be. Consequently, careful documentation of performance during this period is very important. In effect, the OTI becomes a shortened evaluation period. It is the performance in the cited unacceptable critical element(s) that will be evaluated in making a determination as to the course of action at the end of the OTI.

If an employee's overall performance in the cited unacceptable critical element(s) becomes results achieved during the OTI, the employee will be so notified in writing.

If an employee's performance once again deteriorates (within one year of the OTI being issued) the OTI action may be taken to reassign, remove or demote the employee without providing him/her with an additional opportunity.

If at the end of the opportunity period, it is determined that the employee's performance has improved but still is less than results achieved, consideration may be given to extending the opportunity period. If so, a notice should be given to the employee which acknowledges the improvement, identifies what is needed to become results achieved, and specifies the period of time for which the opportunity has been extended.

Proposing a Removal or Reduction-In-Grade For Unacceptable Performance

If an employee's performance remains unacceptable during the OTI, a determination must be made as to whether a proposed reduction-in-grade or removal is appropriate. You are not precluded from considering alternatives such as reassignment to another position, voluntary reduction-in-grade or voluntary retirement. The manager's recommendation for appropriate action is requested by memorandum to the Employee/Labor Relations Branch/Section through channels. All proposals and decision letters are written by the Employee and Labor Relations Specialist.

The requirements for a proposed reduction-in-grade or removal are set forth in law. As noted previously, complete documentation of the unacceptable performance is essential in preparing a performance-based action.

In proposing a removal or reduction-in-grade for unacceptable performance, the notice must include the critical element(s) and performance standard(s) that are unacceptable. The instances of unacceptable performance cited must have occurred in the rating period for which the proposal letter is issued. It is essential that instances of unacceptable performance which occurred during the OTI be included.

3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) (Continued)

In the proposal, the employee is given a 30-day advance notice period during which the employee has a reasonable time in which to answer orally or in writing. A reasonable period of time is considered 15 days from receipt of the proposed action letter. An employee may request an extension of time within this period to submit an oral or written reply.

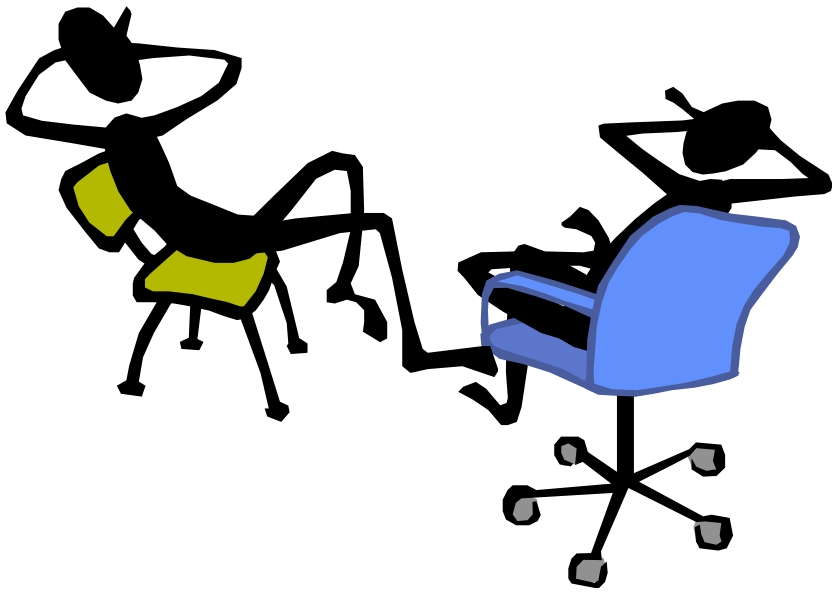
The decision on the proposed action **MUST** be issued to the employee within 30 days after expiration of the advance-notice period. This time limit is stated in 5 U.S.C. 4303(c)(1) and must be complied with.

County Employees

The procedures for taking a performance-based action for county employees are contained in National Handbook 22-PM. A county employee will receive a letter advising him or her of the removal or downgrade and the reasons for the action. The letter will state what appeal rights the county employee has. The effective date of the action must be set 14 days after the employee receives the letter. With the approval of Deputy Administrator for Field Operations (DAFO), administrative leave may be granted for this 14-day period if the employee's presence in the office may affect efficient operations.

Denial of a Within-Grade Increase

If an employee's within-grade increase is coming due and the employee is not performing at an acceptable level of competence - that is, at a fully successful "results achieved level" - certain procedures must be followed to deny the step increase. Counseling regarding the unacceptable or marginal performance should have been ongoing.



3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) (Continued)

Notice of Denial of a Within-Grade Increase

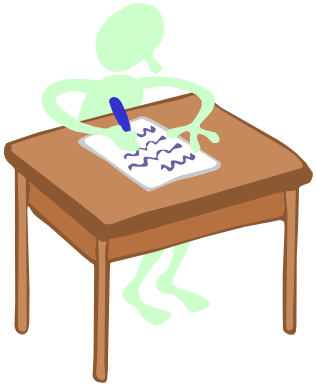
A decision to deny a within-grade increase should be communicated to the employee prior to the effective date of the within-grade increase. The written notice should include:

- A statement informing the employee of the reason(s) for the denial – with reference to specific critical element(s) and performance standard(s) – and that the within-grade is being denied.
- A statement that, if performance improves to a fully successful level, the within-grade will be granted effective the first day of the pay period following its approval and certification.
- A statement that the employee may make a written request for reconsideration and that it is due within 15 calendar days from the date of receipt of the denial letter.
- A statement that the employee has the right to contest the negative determination, both personally and in writing, as well as the right to be represented by an attorney or other representative.

3 Performance and Conduct (Continued):

A. Performance Based Actions (Statutory 5 CFR 432) (Continued)

Reconsideration



An employee may request reconsideration of a within-grade denial by filing such a request in writing within 15 calendar days of receipt of the denial.

A final decision, to grant or deny the within-grade increase must be made promptly and in writing.

If the reconsideration is favorable to the employee, the within-grade is granted retroactively. If the reconsideration affirms the denial, the written decision should include the reasons for the decision and the employee's right of appeal.

Employees may appeal to the Merit Systems Protection Board the denial of their within-grade increase.

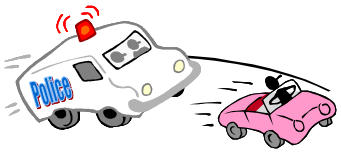
Procedural requirements for actions based on unacceptable performance must be followed to ensure that the action is ultimately successful and at the same time all the legal rights guaranteed to the employee are protected. While the procedural requirements are complex, you are not expected to become an expert in all of them. Your Employee and Labor Relations Specialist will provide the expert advice and assistance that you will need.

NOTE: County employees do not have reconsideration rights or appeal rights to MSPB on performance or conduct-based actions.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Statutory 5 CFR 752)

Conduct and Discipline



Discipline is necessary for the orderly and efficient administration of the Agency and accomplishment of the Agency's mission.

Discipline is achieved by the promulgation of rules and enforcement of those rules by appropriate disciplinary or nondisciplinary actions.

The purpose of discipline is to correct: not punish

The appropriate disciplinary action is the least severe action which will correct the misconduct. Generally, the more serious the misconduct, the more severe the disciplinary action. Consistency in taking disciplinary action is a primary objective. Disparate treatment (treating similarly situated employees differently) may indicate an improper action and may be grounds for a third party to reverse a disciplinary action. However, mitigating and aggravating factors must also be considered.

Responsibility

Supervisors are responsible for making employees aware of work and office requirements and for maintaining discipline within the span of their authority. When violations occur, supervisors must:

- Document the occurrence
- Refer the matter to the Office of Inspector General (OIG) when appropriate
- Recommend or take appropriate action depending on the authority they've been delegated.

The Employee/Labor Relations Branch/Section is responsible for advising and assisting supervisors in their efforts to maintain discipline and for ensuring that actions taken are in accordance with the law and regulations.

Employees are responsible for compliance with the various work requirements issued to them, including the Rules of Conduct. In addition, they are responsible for reporting misconduct either to OIG (criminal conduct and violations of the rules of conduct) or to their supervisors.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Statutory 5 CFR 752) 1/ (Continued)

Types of Misconduct

How disciplinary cases develop depends on the type of misconduct. The two basic types of misconduct are:

1. **Criminal Acts** – Report of such misconduct must be made directly to OIG. OIG may then investigate, interview the employee, and produce a report of investigation which will be forwarded to management for a determination as to what, if any, disciplinary action might be appropriate. OIG may be asked to do additional investigating if more information is needed in order to properly adjudicate the case. As a general rule, reports of investigation are referred to first level managers for an initial recommendation.

2. **Administrative Disciplinary Matter** – Managers are generally able to deal with administrative matters without the assistance of professional investigators. However, sometimes management may request that the Employee/Labor Relations Branch/Section conduct an administrative misconduct investigation. Typical administrative matters include such things as:

- Tardiness, AWOL, or leave abuse
- Use of intoxicants or being intoxicated on duty
- Insubordination
- Fighting
- Indebtedness

Taking Appropriate Action

Before proposing or taking any action, one must determine whether the available evidence that can be provided to the employee can support any of the following actions:

1. **An adverse action** (removal, demotion, or suspension of more than 14 calendar days) must be supported by a "preponderance of the evidence," which is evidence that a reasonable person would accept as sufficient to find a contested fact more probably true than untrue.

2. **A disciplinary action** (1 to 14 day suspension, reprimand) must also be supported by preponderance of the evidence.

1/ 5 CFR 752 applies only to Federal employees. However, the basic principles on handling misconduct based actions are applicable to county office employees, although appeal procedures do not apply.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Statutory 5 CFR 752) (Continued)

Types of Action

1. **A clearance letter** is appropriate if the evidence establishes the innocence of the employee or clearly fails to support the allegation.

2. **A closed without action letter or cautionary letter** is appropriate if the evidence is inconclusive, or if it is determined that a disciplinary action is not warranted, but the employee should be cautioned about certain conduct.

3. **A letter of reprimand** is the least severe form of disciplinary action. It is appropriate for the first offense, or, in line with the concept of progressive discipline, for repetition of a relatively minor offense. The action should make it clear that failure to correct the misconduct could result in more serious action, up to and including removal from the service. A copy of the reprimand is filed in the employee's Official Personnel Folder for a period of 2 years.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Statutory 5 CFR 752) (Continued)

4. **A suspension** is the involuntary placement of an employee who is otherwise ready, willing and able to work in a non-duty, non-pay status. It is used to correct serious or repeated misconduct. It is an appropriate disciplinary measure when less severe actions fail to correct an employee's conduct or when the gravity of the offense warrants stringent corrective action. A suspension of more than 14 days (which is classified as an adverse action and can be appealed to the Merit System Protection Board) is rarely taken except for offenses with a minimum 30-day suspension, such as Hatch Act violations or misuse of a government vehicle.

5. **A reduction-in-grade or pay (demotion)** is used as a disciplinary action only in unusual situations. One example is to change a manager to a lower grade non-supervisory position when the employee's misconduct would damage or impair his or her effectiveness as a manager.

6. **A removal** is taken when employee conduct is sufficiently serious to warrant termination of the employment relationship; in other words, when it is not possible to "correct" the misconduct by disciplinary action. Some examples are serious violations of criminal statutes, corruption, substantive conflict of interest, material breach of integrity, physical assault or acts which cause or threaten to cause serious damage to the service and its public image, or repeated incidents of relatively minor misconduct which progressive discipline has failed to correct.

7. Occasionally, when an employee is involved in criminal conduct and the agency either does not have enough evidence to take a removal action, an **indefinite suspension** can be effected as a temporary measure. This action can be taken when it is established that there is "reasonable cause to believe a crime has been committed," such as from an indictment or preliminary investigation.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Statutory 5 CFR 752) (Continued)

Factors to Consider

The Merit Systems Protection Board has held that any decision on adverse actions must be based on all factors relevant to a specific employee and a specific conduct situation. These are the "Douglas" factors. All factors may not be relevant to all cases. Factors may be mitigating or aggravating. The following factors should be considered minimum:

- The nature and seriousness of the offense and its relation to the employee's position; whether or not the offense was intentional, malicious, or for gain; whether or not it was repeated.
- The employee's position (including supervisory or fiduciary role), contacts with the public, etc.
- The employee's past disciplinary record.
- The employee's past work record, length of service, performance, dependability, etc.
- The impact of the offense on the employee's ability to perform satisfactorily and its effect on his or her manager's confidence in the employee.
- Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- The notoriety of the offense or its impact on the reputation of the service.
- The clarity with which the employee was on notice of the rule violated.
- The employee's potential for rehabilitation.
- Circumstances such as unusual job tensions, personal problems, mental impairment, harassment, provocation, etc.
- The availability of alternative sanctions to deter such conduct in the future on the part of the employee or others.

In addition to mitigating and aggravating factors, factual disputes apparent from the evidence and the employee's replies must be considered and addressed in making a final decision.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Statutory 5 CFR 752) (Continued)

Procedures

Suspensions and adverse actions require a two-step procedure with a proposal and decision.

The employee has a right to:

- Be represented
- Reply orally and in writing to the proposed action
- The information relied on in proposing the action
- Remain in duty status during the advance notice period (except in unusual circumstances).

Actions should be taken expeditiously. Long delays in taking actions may indicate to a third party that disciplinary action was not really required.

Reprimands and suspensions of 14 days or less may be grieved through the agency grievance system. Adverse actions may be appealed to the Merit Systems Protection Board. Employees may also have the right to contest actions through the discrimination complaints procedure.

Specific rights of employees and obligations of management are contained in the Code of Federal Regulations. It is important that these be complied with. Otherwise, the action may be reversed on the grounds that an error harmful to the employee has occurred.

NOTE: Federal and county employees now use the same two-step process for disciplinary/adverse actions.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Statutory 5 CFR 752) (Continued)

Special Situations

Off-duty Misconduct: When misconduct has occurred off-duty, the agency must demonstrate the connection between the misconduct and the efficiency of the service (the nexus). This is stated in a proposal letter or a letter of reprimand. The nexus can be based on such things as publicity or notoriety, concern for safety of employees or taxpayers, lack of confidence caused by demonstrated dishonesty, etc.

Emergency Situation: If an employee's continued presence on the job may pose a threat to the employee or others, result in loss of or damage to government property, or otherwise jeopardize legitimate government interests, the agency may assign the employee to other duties; place the employee on leave with his or her consent; place the employee on involuntary leave when the employee is not "ready, willing, and able to work;" invoke the crime provision (which allows a shortened notice period) if there is reasonable cause to believe that a crime has been committed, or place the employee in a paid, non-duty status for all or part of the advance notice period.

Leave Problems: In dealing with tardiness and leave abuse, it is vitally important to implement the concept of progressive discipline. Minor violations should be dealt with by counseling, with discipline reserved for very serious infractions or repeated misconduct. A leave restriction letter is not a disciplinary action, but it can be a very useful tool for emphasizing management's concerns with a leave problem and for solving that problem. It is strongly suggested that you consult with your servicing Employee and Labor Relations Specialist prior to issuing such a letter. It is important to remember that, except in unusual circumstances, approved leave (including approved leave without pay) cannot be used to support a disciplinary action. Accordingly, if it appears that a disciplinary action may be necessary, unauthorized absences should always be charged to AWOL. It is also important to note that leave without pay is, in most cases, discretionary with management.

Probationary Employees: If a problem is evident during an employee's probationary period, serious consideration should be given to taking prompt action since fewer procedures and restricted appeal rights are in effect for actions during the probationary period. Accordingly, it is good practice to make this decision as far in advance of the expiration of the probationary period as possible.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Statutory 5 CFR 752) (Continued)

The probationary period is regarded as a final and highly significant step in the examining process. It provides the final indispensable test, that of actual performance on the job, which no preliminary testing methods can approach in validity. During the probationary period, the employee's conduct and performance in the actual duties of his/her position may be observed, and he/she may be separated from the service without undue formality if circumstances warrant. Thus, the probationary period, properly employed, provides protection against retention of any person who, in spite of having passed preliminary tests, is found in actual practice to be lacking in fitness, and capacity to acquire fitness, for permanent Government service.

> *If it becomes apparent, after full and fair trial, that the employee's conduct, general character traits, or capacity do not fit him or her for satisfactory service, the supervisor shall initiate action to separate the employee. This kind of action should be taken as soon as these facts become apparent, and should, in any event, be taken in sufficient time for the employee to be notified, prior to the expiration of the probationary period, that he or she will not be retained.*

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Continued)

County Misconduct Procedures

Refer to July 27, 2005 memorandum from Deputy Administrator for Field Operations to be incorporated into revision of Handbook 22-PM, County Office Personnel Management.

County Appeal Procedures

Notification, Decision and Appeal Process
Suspensions of 14 Calendar Days or Less[1/]
County Office Employees and Committees

Persons Affected	Proposing Official(s)	To Whom Reply is Made	Deciding Official(s)	To Whom Appeal of Final Decision Addressed
Permanent County Office Employee	CED	COC	COC	STC
	COC	STC	STC	DAFO
	STC	STC	STC	DAFO
CED	COC	STC	STC	DAFO
	STC	STC	STC	DAFO
COC	STC	STC	STC	DAFO

1/ DAFO may issue proposal notices and decision letters in all cases. All DAFO final reviews of suspensions of 14 calendar days or less are on the record. There is no right to a hearing in these cases.

3 Performance and Conduct (Continued):

B. Misconduct Based Actions (Continued)

Notification, Decision and Appeal Process
Suspensions of More Than 14 Calendar Days and Removals[1/]
County Office Employees and Committees

Persons Affected	Proposing Official(s)	To Whom Reply is Made	Deciding Official(s)	Review	Appeal[2]
Permanent County Office Employee	CED	COC	COC	STC	DAFO
	COC	STC	STC	----	DAFO
	STC	STC	STC	----	DAFO
CED	COC	STC	STC	----	DAFO
	STC	STC	STC	----	DAFO
COC	STC	STC	STC	----	DAFO

1/ DAFO may issue proposal notices and decision letters in all cases.
2/ There is a right to a hearing before DAFO if requested by appellant.

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

1. PURPOSE

The purpose of this directive is to set forth the Department of Agriculture's (USDA) policies, procedures, and standards on employee responsibilities and conduct. Although it specifically addresses many ethics and conduct requirements, it is not intended to cover all possible situations.

2. REFERENCES

This directive must be used in conjunction with:

a. 5 United States Code (USC), Chapter 73, Suitability, Security, and Conduct;

b. Executive Orders 12674 and 12731, Principles of Ethical Conduct for Government Officers and Employees;

c. 5 Code of Federal Regulations (CFR), part 735, Employee Responsibilities and Conduct;

d. 5 CFR, part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (hereinafter referred to as "*Standards*"); and

e. 5 CFR, part 8301, Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture (hereinafter referred to as "*USDA Supplement*"). Employees shall adhere to these and other related standards, policies, and regulations promulgated by USDA and its agencies.

3. SPECIAL INSTRUCTIONS

This directive supersedes Personnel Bulletin Number 735-1, Employee Responsibilities and Conduct, dated November 12, 1996, as extended by memorandum dated December 18, 1998.

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

4. POLICY

It is USDA's policy that its employees:

a. Maintain high standards of honesty, integrity, and impartiality;

b. Adhere to the rules set forth in this directive, as well as all directives referenced in section 2 of this directive;

c. Comply with lawful supervisory direction; and

d. Comply with work-related laws, regulations, and policies.

5. DEFINITIONS

For the purpose of this directive, the following terms are defined as set forth below:

a. Agency. An organizational unit of the Department, other than a staff office as defined below, whose head reports to an Under Secretary.

b. Ethics Advisor (EA). Employees within the USDA Office of Ethics (OE) responsible for providing ethics advice and guidance.

c. Deputy Ethics Official (DEO). An employee delegated the authority by the Designated Agency Ethics Official under Office of Ethics Issuance 02-2, to administer ethics program functions within an agency or staff office.

d. Designated Agency Ethics Official (DAEO). The employee designated by the Secretary to manage the USDA Ethics Program in accordance with 5 CFR § 2638.203.

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

e. Personally Identifiable Information. Any information about an individual maintained by an agency, including, but not limited to, financial transactions, medical history, or criminal history, and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc. including any other personal information which is linked or linkable to an individual.

f. Office of Ethics (OE). Office within USDA Departmental Administration responsible for administering ethics regulations and statutes governing employee conduct; conducting public confidential financial disclosure reporting programs; developing and implementing supplemental ethics policies; providing advice and assistance to USDA employees; training employees on all ethics statutes, regulations, and policies.

g. Staff Office. A Departmental administrative office whose head reports to the Secretary.

h. Staff Office Head. The head of a staff office or an official who has been delegated the authority to act for the head of the staff office in the matter concerned.

i. Supervisor. An employee having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; or having responsibility to direct them, adjust their grievances, or effectively recommend such action if, in connection with the foregoing, the exercise of authority is not of a merely routine or clerical nature but requires the use of independent judgment.

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

6. ABBREVIATIONS

AWOL – Absence Without Leave
CFR – Code of Federal Regulations
DAEO – Designated Agency Ethics Official
DEO – Deputy Ethics Official
EA – Ethics Advisor
GSA – General Services Administration
MSPB – Merit Systems Protection Board
OE – Office of Ethics
OPM – Office of Personnel Management
OSC – Office of Special Counsel
PII – Personally Identifiable Information
USC – United States Code
USDA – Department of Agriculture

7. RESPONSIBILITIES

a. Agency and Staff Office Heads are responsible for:

(1) Ensuring that every current employee is provided with a current copy of this directive within 90 days of its issuance; and

(2) Ensuring that every new employee is furnished a copy of this directive at the time of appointment.

b. Supervisors are responsible for:

(1) Maintaining high standards of ethical conduct. They must become familiar with and comply with the requirements in this directive, the *Standards*, and the *USDA Supplement*; and

(2) Responding to employee questions on matters covered by this directive, the *Standards*, and the *USDA Supplement*, and/or referring employee ethics questions to the USDA Office of Ethics or an appropriate EA.

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

8. DELEGATION OF AUTHORITY

Unless otherwise stated, any authorities delegated in this directive may be redelegated to a level of management that has the experience and/or training to administer the authority.

9. EMPLOYEE NOTIFICATION

The employee notifications set forth in section 7(a) of this directive may be provided either electronically or by hard copy. In conjunction with receiving a copy of this directive, every employee must be provided information on where to direct questions regarding its content.

10. SUPPLEMENTATION

Agencies and staff offices may supplement this directive with prior approval of the Director, Office of Human Capital Management. Supplemental regulations issued by agencies or staff offices may not conflict with, but may expand upon and be more restrictive than, the contents of this directive. Agencies and staff offices must provide copies of any supplemental regulations to employees as required in sections 7(a) and 9 of this directive.

11. PROHIBITED ACTIVITIES

Employees are prohibited from:

a. Engaging in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government at any time;

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

b. Conducting or participating in any gambling activity including the operation of a gambling device, conducting a lottery or pool, a game for money or property, or selling or purchasing a numbers slip or ticket while on Government-owned or Government-leased property or while on duty for the Government. This does not preclude:

(1) Activities necessitated by an employee's official duties; or

(2) Fundraising permitted under section 7 of Executive Order 12353 and similar agency-approved authorities;

c. Engaging in teaching, lecturing, or writing, as part of their official duties performed at or for any educational institution or other organization that discriminates because of race, creed, color, sex, religion, age, national origin, physical or mental disability, or sexual orientation in the admission or subsequent treatment of students;

d. Engaging in teaching, lecturing, or writing, with or without compensation, to prepare a person or class of persons for an examination administered by the Office of Personnel Management (OPM) or the Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's government employment. This does not preclude such teaching, lecturing, or writing if:

(1) Prior written authorization is obtained from the Director of OPM, or his or her designee, or by the Director General of the Foreign Service or his or her designee, as applicable. Employees should seek advice from OE concerning the application of the restrictions on compensated teaching, speaking, and writing under the *Standards* (5 CFR §2635.807) and the requirement to seek prior USDA approval for outside employment under the *USDA Supplement*, even when authorization has been obtained; or

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

(2) The information upon which the preparation is based has been made available to the general public or will be made available to the general public on request;

e. Using an intoxicating substance on Government-owned or Government-leased property (except when authorized by the Office of Operations for the Washington, D.C. complex; the Agency Head in field locations owned by USDA; or the Agency Head in field locations leased by USDA or controlled by the General Services Administration (GSA), upon concurrence by the lessor or the appropriate GSA official in accordance with policy contained in Departmental Regulation 1630-001), "Use of Alcoholic Beverages and Narcotics in USDA Occupied Space", or transporting or using an intoxicating substance in a Government-owned or leased vehicle;

f. Harassing employees by word or action, or knowingly making false accusations against employees;

g. Monitoring telephone conversations, recording telephone conversations by device, or authorizing or permitting others under their administrative control to monitor telephone conversations or record telephone conversations by device, except:

(1) As authorized by the Inspector General or his or her designee, with the prior consent of one party to a telephone conversation and when necessary in a criminal investigation;

(2) When all parties agree in advance; or

(3) In the context of a telephone call center or similar operations. In such situations, supervisors may monitor or record telephone conversations for the purpose of evaluating performance of employees with proper notice to all parties to the communication;

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

h. Utilizing any device to monitor or record non-telephone conversations, except:

(1) As authorized by the Inspector General or his or her designee, with the prior consent of one party to a non-telephone conversation and when necessary in a criminal investigation;

(2) When all parties agree in advance; or

(3) When in the context of telephone call center or similar operation. In such situations, supervisors may monitor or record telephone conversations for the purpose of evaluating performance of employees with proper notice to all parties to the communication;

i. Soliciting for the sale of any article, or selling any article, including but not limited to candy or other items for schools or charities, kitchenware or other home furnishings, paper products, cosmetic products; or any other items whatsoever, in person or by distributing or posting literature, advertising material, or any other graphic matter, in or on Government-owned or leased property, or property occupied by USDA, unless authorized by law or regulation;

j. Engaging in sexual misconduct including, but not limited to, unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment;

k. Failing to take appropriate action on complaints or proven acts of sexual harassment (this applies to supervisor or managers who know or should have known of those acts);

l. Displaying discourteous conduct or disrespect to a coworker, another Federal employee, or a member of the public when acting in an official capacity;

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

m. Failing to wear or use specified safety equipment, or failing to report obvious unsafe conditions while on official duty; and/or

n. Making threats against other employees, members of the public, or Government property.

12. ATTENDANCE AND LEAVE

a. Every employee must observe designated duty hours and be punctual in reporting for work and returning from lunch periods. Tardiness can result in employees being placed in a non-pay status for unauthorized absence; i.e., absence without leave (AWOL).

b. Every employee must normally obtain advance authorization for any absence from duty. Approval of leave is a discretionary matter reserved to the supervisor. The use of leave is not a right afforded to an employee, but is conditioned on the needs of USDA service. Where absence from duty results from illness or an emergency, an employee is required to notify his or her supervisor or other appropriate person as soon as possible. When an employee fails to properly notify his or her supervisor, the absence may be charged as AWOL.

c. Leave is administered in accordance with 5 CFR § 630 and applicable USDA, agency, and staff office policies.

13. SALE OF PERSONAL PROPERTY

a. Personal property offered for sale by USDA may be purchased by employees only when the sale of such property is based upon competitive bids.

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

b. No purchase may be made by an employee who:

(1) Was formerly accountable for the property;

(2) Formerly used the property; or

(3) Was in any way connected with its condemnation, declaration as excess, or sale.

The above prohibitions do not apply in the following situations:

(1) Surplus perishable products may be sold to employees at the best price obtainable in quantities not exceeding the needs of their immediate households;

(2) Surplus Government property may be sold to employees when it is being sold to the general public; and

(3) Special clothing and other articles or personal equipment purchased for the exclusive use of and fitted to an individual employee may, when not otherwise usable by USDA and in all respects are surplus to the needs of the Government, be sold to such employees at the best price obtainable in the event of their separation from USDA or permanent assignment to duties not requiring such clothing or equipment.

14. USE OF GOVERNMENT VEHICLES

a. Every employee is prohibited, unless specifically authorized by the agency in accordance with Departmental Regulation 5400-5, "Use of Government Vehicles for Home to Work", from storing Government-owned or Government-leased motor vehicles at or near their private residence or at other unauthorized locations including, but not limited to, homes of relatives or friends, or from using such vehicles for transportation between their residence and place of employment.

b. No employee shall use Government-owned or Government-leased vehicles to transport unauthorized passengers.

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

c. Every employee is required to wear seat belts whenever riding as an operator or as a passenger in a truck, automobile, or other passenger vehicle in the performance of official duties or while on official time.

d. Unless authorized to do so in the performance of official duties, every employee is prohibited from using Government-owned or Government-leased vehicles to transport firearms or explosives.

15. FOREIGN ASSIGNMENTS

An employee serving on foreign assignment must fully comply with Department of State's regulations governing the post to which he or she is assigned.

16. COMPUTERS AND TELECOMMUNICATIONS EQUIPMENT

a. Unless an employee has specific authorization, he or she is prohibited from accessing any USDA or Federal government electronic, laser, or magnetic system of storing information, or computer software, not expressly identified for public or general access. This prohibition includes, but is not limited to computers of all types, floppy diskettes, compact or laser discs, and magnetic tapes. Employees without specific authorization may be subject to disciplinary or adverse action regardless of whether they use, damage, or make alterations to the stored information.

b. Every employee must adhere to the requirements of Departmental Manual 3525-000, "Internet and E-Mail Security" and other policies and regulations involving the use of information technology, telecommunications resources, and equipment owned and leased by USDA. Every employee must comply with acceptable use policies for telecommunication equipment as contained in Departmental Regulation 3300-001, "Telecommunications and Internet Services and Use", and in Departmental Regulation 1710-001, "Interception and Monitoring of Conversations."

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

17. PERSONALLY IDENTIFIABLE INFORMATION

a. Every employee who has access to personally identifiable information (PII) of other employees, contractors, or the general public through the course of his or her employment at USDA is required to safeguard and protect such information from unauthorized disclosure.

b. Every employee is required to immediately report any known or suspected breach of the PII safeguards or policies, or actual unauthorized disclosure of PII to his or her supervisor.

18. RETALIATION AND REPRISAL

No employee may retaliate against another, by word or action, for filing complaints about safety problems, for filing grievances under either the negotiated or administrative grievance system, for filing complaints of discrimination, for assisting the investigators of USDA, or for engaging in any other protected activity.

19. REPORTING MISCONDUCT

a. Every employee is required to report actions by other employees that they know, or have a reasonable basis to believe, are violations of law or regulation. A report may be made to the USDA Office of Inspector General, the employee's supervisor, or any appropriate USDA management official.

b. Violations include, but are not limited to:

(1) Fraud, waste, and abuse of Government resources;

(2) Criminal activity of any kind;

(3) Violations of Federal personnel rules;

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

(4) Sexual harassment;

(5) Prohibited personnel practices; and

(6) Violations of this directive, the *Standards,* or the *USDA Supplement.*

20. MISCELLANEOUS CONDUCT PROVISIONS

a. Fiscal Responsibility. Any money, property, or other item of value received by or coming into the custody of an employee in connection with the discharge of his or her duties must be accounted for, deposited, appropriately secured, properly maintained, or otherwise disposed of in accordance with established procedures. Fiscal responsibility includes the proper use of Government-issued credit cards and the timely payment of claims.

b. Cooperation with Oversight Agencies. Every employee is required under Subchapter A., Part 5, Regulations, Investigation, and Enforcement (Rule V) to provide OPM, the Merit Systems Protection Board (MSPB), and the Office of Special Counsel (OSC), and their authorized representatives, all information and testimony in regard to matters arising under laws, rules, and regulations administered by OPM, MSPB, and OSC, the disclosure of which is not otherwise prohibited by law or regulation.

c. Cooperation with USDA Investigations. Every employee is required to provide all information he or she possesses to authorized representatives of USDA when called upon, if the inquiry relates to official matters and the information is obtained in the course of employment or as a result of relationships incident to such employment. Such activities include participating in interviews requested by authorized representatives of USDA and furnishing signed, sworn/affirmed statements to the authorized representatives. Failure to respond to requests for information, including the furnishing of signed sworn/affirmed statements in a timely manner, or failure to appear as a witness in official proceedings may result in disciplinary action. (Nothing set forth herein shall be deemed to infringe upon an employee's right to invoke the protection of the Fifth Amendment to the United States Constitution with respect to self-incrimination in a criminal investigation or for

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

a bargaining unit employee to request union representation in accordance with his or her rights under 5 USC §7114 (a)(2)(B) – Weingarten Rights.)

d. Details, Reassignments and Transfers. Supervisors have the authority to transfer, detail, and reassign an employee whenever necessary to meet operational needs, subject to applicable regulations and collective bargaining agreement provisions. Every employee has an obligation to accept a transfer, detail, or reassignment. Failure to accept a transfer, detail, or reassignment may result in an adverse action including separation of the employee.

e. Firearms and Weapons. In accordance with 18 USC §930 and its exceptions, every employee is prohibited from knowingly possessing or causing the presence of a firearm or other dangerous weapons in a Federal facility (i.e. a building or part thereof, owned, or leased by the Federal government, where Federal employees are regularly present for the purpose of performing their official duties), or in a Federal court facility.

f. Prohibited Personnel Practices. Every employee who has the authority to take, direct others to take, recommend, or approve any personnel action (Prohibited Personnel Practices, 5 USC §2302 (b)), is prohibited from:

(1) Discriminating on the basis of race, color, religion, sex, age, national origin, disability, marital status, or political affiliation;

(2) Soliciting or considering employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;

(3) Coercing the political activity of any person;

(4) Deceiving or willfully obstructing any person from competing for employment;

3 Performance and Conduct (Continued):

C. Employee Responsibilities and Conduct (Departmental Regulation 4070-735-001 dated October 4, 2007) (Continued)

(5) Influencing any person to withdraw from job competition for the purpose of improving or injuring the prospects of any other person for employment;

(6) Granting any preference or advantage not authorized by law, rule, or regulation to improve or injure the prospects of any particular person for employment;

(7) Engaging in nepotism (hiring, promoting, or advancing relatives);

(8) Taking reprisal for whistleblowing;

(9) Taking reprisal for the exercise of an appeal right;

(10) Discriminating based on personal conduct which does not adversely affect the performance of the employee, applicant, or others;

(11) Violating veteran's preference requirements; or

(12) Violating any law, rule, or regulation implementing or directly concerning merit system principles.

21. DISCIPLINARY OR ADVERSE ACTION

a. A violation of any of the responsibilities and conduct standards contained in this directive may be cause for disciplinary or adverse action.

b. Disciplinary or adverse action shall be effected in accordance with applicable law and regulations.

3 Performance and Conduct (Continued):

C. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994)

The purpose of this Guide is to assist those responsible for disciplining employees in selecting appropriate penalties. While the Guide does not cover every possible offense, it does provide the more common types of offenses and the penalties usually assessed. Opportunities for the appropriate use of *alternative discipline* (see DPM Chapter 751 - Subchapter 4) may also be considered. Consistent with DPM Chapter 751 Subchapter 4, alternative discipline is available in appropriate circumstances in all cases, except when the penalty to be proposed is removal from the service or dictated by statute. Alternative discipline may also be considered when mitigating circumstances serve to reduce a proposed penalty of removal to a lesser penalty, including a suspension of letter of reprimand.

Although each case must be evaluated on its own merits, the Guide does provide a framework to assure consistent application of disciplinary penalties throughout the Department.

Before proposing or deciding on a particular penalty, agency officials should consider all the pertinent factors, including:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with the USDA Guide for Disciplinary Penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Not all of these factors will be pertinent in every case, and frequently in the individual case some of the pertinent factors will weigh in the employee's favor while others may not or may even constitute aggravating circumstances. Selection of an appropriate penalty must thus involve a responsible balancing of the relevant factors in the individual case.

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
1. **FISCAL IRREGULARITIES** (Penalty depends on the monetary value, position held, personal benefit, and/or other pertinent factors.)		
a. Submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).	Letter of Reprimand to Removal, if for administrative convenience or to avoid following required procedures.	Removal
	14-Day Suspension, if it results in personal benefit to another.	Removal
	Removal, if it results in personal benefit.	
b. Unauthorized and/or improper use of property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	14-Day Suspension to Removal	Removal
c. Failure to properly account for or make proper distribution of any property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	Letter of Reprimand to Removal	Removal
d. Concealment of (or failing to report) missing, lost, or misappropriated funds, or other fiscal irregularities.	Letter of Reprimand to Removal	14-Day Suspension to Removal
2. FALSE STATEMENT(S)/INCORRECT OFFICIAL DOCUMENTS (False statements or entries in connection with fiscal matters and documents are covered in 1. above.)		
a. Deliberate falsification of an application for employment (SF-171), or other personal history record by omission or by making a false entry. Note: If an incorrect or inaccurate entry or statement is determined to be unintentional, other (non-disciplinary) action should be taken.	Removal, if it would have adversely affected selection for appointment or promotion.	
	Letter of Reprimand to 14-Day Suspension, if it would not have adversely affected selection for appointment or promotion.	14-Day Suspension to Removal

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
b. Misrepresentation, falsification, or concealment of material facts or documents in connection with an official matter, including an investigation.	Letter of Reprimand to Removal	Removal
c. Knowingly and willfully making an incorrect entry on an official document or approving an incorrect official document.	Letter of Reprimand to Removal	14-Day Suspension to Removal
3. CONDUCT PREJUDICIAL TO THE BEST INTERESTS OF THE SERVICE		
a. Conduct which causes the employee to be indicted or charged with a criminal offense which is related directly to the duties of the employee's position or the mission of the Agency and for which a sentence of imprisonment may be imposed.	Indefinite Suspension (Unit the outcome of the legal action is known and/or until the completion of appropriate adminis-trative action.)	
b. Conduct which causes the employee to be convicted of a criminal charge which is related directly to the duties of the employee's position or the mission of the Agency.	Removal	
c. Off duty conduct which adversely affects the employee's job performance or trustworthiness, or adversely affects the ability of the Agency to accomplish its mission.	Letter of Reprimand to Removal	Removal
d. Infamous or notoriously disgraceful conduct.	Removal	
e. Concealing, removing, mutilating, altering or destroying Government records.	Letter of Reprimand to Removal	14-Day Suspension to Removal
f. Malicious or intentional damage or loss of Government-owned or Government-leased property.	Letter of Reprimand to Removal	14-Day Suspension to Removal
g. Using public office for private gain.	14-Day Suspension to Removal	Removal
h. Unethical or improper use of official authority or credentials.	Letter of Reprimand to Removal	Removal
i. Unauthorized disclosure or use of (or failure to safeguard) information protected by the Privacy Act or other official, sensitive, or confidential information.	Letter of Reprimand to Removal	Removal

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
j. Having a direct or indirect financial interest that an employee could reasonably expect to be in conflict or appear to be in conflict with his or her official duties and responsibilities. (When a conflict of financial interest occurs that is inadvertent and that could not be reasonably anticipated by the employee, the situation would normally be handled by divestiture or recusation rather than disciplinary action.)	Letter of Reprimand to Removal	Removal
k. Engaging in outside employment or other activities without required prior approval.	Letter of Reprimand to 5-Day Suspension	14-Day Suspension to Removal
l. Improperly soliciting or accepting, directly or indirectly, a gift from any individual or establishment seeking or having a contractual or business relationship with the Department.	5-Day Suspension to Removal	Removal
m. Improperly soliciting a contribution from another employee for a gift to a official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less pay.	Letter of Reprimand to Removal	Removal
n. Borrowing money from a subordinate employee, securing a subordinate's endorsement on a loan, or otherwise having a subordinate assume the financial responsibility of a superior.	Letter of Reprimand to Removal	Removal
o. Use of (or authorizing the use of) employees, or Government owned, leased or provided property, facilities, services or credit cards, for inappropriate or non-official purposes.	Letter of Reprimand to Removal	5-Day Suspension to Removal
p. Willful use of (or authorizing the use of) any Government-owned or Government-leased passenger vehicles or aircraft for other than official purposes.	30-Day Suspension to Removal [31 U.S.C. 1349(b) mandates a minimum penalty of a one month suspension for unofficial use of Government passenger carrying vehicles or aircraft.]	Removal

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
q. Use of (or authorizing the use of) other Government-owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	30-Day Suspension to Removal	Removal
r. Carrying of unauthorized passengers in Government-owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
s. Unauthorized use, removal or possession of a thing of value belonging to another employee or private citizen.	Letter of Reprimand to Removal	Removal
t. Fighting, threatening, attempting to inflict or inflicting bodily harm while on Government premises and/or when in a duty status.	5-Day Suspension to Removal	14-Day Suspension to Removal
u. Use of abusive, offensive, unprofessional, distracting, or incitory (goading) language, gestures, or other conduct; quarreling,; creating a disturbance or disruption; or horseplay.	Letter of Reprimand to 14-Day Suspension	5-Day Suspension to Removal
v. Use of slanderous, malicious, derogatory, discourteous, or otherwise inappropriate language, gestures, or other conduct toward employees, supervisors, or the public.	Letter of Reprimand to Removal	5-Day Suspension to Removal
w. Failure to pay just debts in a timely and proper manner.	Letter of Reprimand to 14-Day Suspension	1-Day Suspension to Removal
x. Gambling on duty or in work areas.	Letter of Reprimand to Removal	Removal
y. Participating in a strike, work stoppage, slowdown, sickout, or similar activity.	Removal	
4. FAILURE/REFUSAL TO FOLLOW INSTRUCTION		
a. Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions.	Letter of Reprimand to 14-Day Suspension	5-Day Suspension to Removal
b. Deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions.	Letter of Reprimand to Removal	14-Day Suspension to Removal

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
c. Refusal to provide information to authorized representatives of the Department or other Government Agencies when called upon, when the inquiry relates to official matters and he information is obtained in the course of employment or as the result of relationships incident to such employment.	Letter of Reprimand to Removal	Removal
d. Failure to report for duty as detailed, transferred, or reassigned.	Removal	
e. Failure to submit required statements of financial interests and outside employment.	Letter of Reprimand to 3-Day Suspension	5-Day Suspension to Removal
5. NEGLECT OF DUTY		
Careless/negligent work, loafing, sleeping on duty, wasting time, conducting personal business while on duty.	Letter of Reprimand to Removal	5-Day Suspension to Removal
6. ATTENDANCE-RELATED OFFENSES (Penalty will depend on the circumstances, including length, frequency, and nature of position. To support disciplinary action, tardiness and unauthorized absences from the work place must be charged to AWOL on the employee's Time and Attendance Report.)		
a. Unexcused tardiness, including delay in: (1) reporting at the scheduled starting time, (2) returning from lunch or break periods, and (3) returning from an authorized absence from the work station.	Letter of Reprimand to 1-Day Suspension	5-Day Suspension to Removal
b. Unauthorized absence, including leaving the work-station without permission or before the end of the workday. [Time periods at right refer to the accumulated total amount of AWOL for each offense (i.e., disciplinary action proposed) rather than for each instance or occurrence of unauthorized absence. For example, if an employee is AWOL on three separate occasions and the total amount of AWOL shown on the T&As is more than 8 hours but less than 5 workdays, the proposed penalty for a first offense would normally be a suspension of from 1 to 14 days.]	Absences of 8 Hours or Less	
	Letter of Reprimand to 5-Day Suspension	5-Day Suspension to Removal
	Absences of More Than 8 Hours But Less Than 5 Workdays	
	1-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
	Absences of 5 Workdays or More	
	14-Day Suspension to Removal	Removal

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE OF MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
7. INTOXICANTS - Alcohol and Spirits (Agencies must assure the requirements of alcohol abuse programs are met before taking action.)		
a. Unauthorized use of intoxicants while on duty, on Government property or Government-controlled property or premises where official duties are performed.	Letter of Reprimand to 14-Day Suspension	30-Day Suspension to Removal
b. Reporting to or being on duty while under he influence of intoxicants.	Letter of Reprimand to 30-Day Suspension	30-Day Suspension to Removal
c. Operating a Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while under the influence of intoxicants.	Removal [If a penalty of less than removal is determined to be appropriate, agencies should (at a mini-mum) suspend the employee's official driving privileges for a period of one year.]	
8. ILLEGAL DRUGS/DRUG PARAPHERNALIA/CONTROLLED SUBSTANCES [See DPM Supplement 792-3, Subchapter 8. USDA will not initiate disciplinary action when an employee – (1) Voluntarily admits drug use to appropriate supervisors or management officials before being identified through other means. (2) Obtains and completes counseling and rehabilitation through Employee Counseling Services Program (ECSP). (3) Thereafter refrains from illegal drug use. In all other circumstances, agencies must make appropriate referrals to the ECSP and initiate appropriate disciplinary action.]		
a. Possession of an illegal drug, drug paraphernalia, or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	5-Day Suspension to Removal	Removal
b. Use of an illegal drug or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	14-Day Suspension to Removal	Removal
c. Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.	14-Day Suspension to Removal	Removal
d. Sale or distribution of an illegal drug or controlled substance.	Removal	

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE FOR MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
e. Operating a Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while under the influence of an illegal drug.	Removal	
f. Interfering with, or refusing or failing to submit to a properly ordered or authorized drug test, including substituting, adulterating, or otherwise tampering with a urine sample.	Removal	
g. Use of an illegal drug or unauthorized controlled substance during non-duty hours and on non-work premises.	Letter of Reprimand to Removal	Removal
9. PROHIBITED POLITICAL ACTIVITY		
Engaging in the types of political activity prohibited by law or by Office of Personnel Management regulations.	Letter of Reprimand to Removal	14-Day Suspension to Removal
10. SAFETY AND HEALTH VIOLATIONS (Penalty should take into consideration whether danger to persons or property is involved.)		
a. Failure to report an accident and/or injury as required.	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
b. Failure or refusal to wear/use required protective equipment (e.g., seat belts, earplugs, eye protection, etc.).	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
c. Operation of a Government-owned or Government-leased vehicle (or privately-owned vehicle while on official business) without an appropriate State driver's license.	5-Day Suspension to Removal	Removal
d. Failure or refusal to observe and/or enforce Safety and Health regulations or to perform duties in a safe manner.	Letter of Reprimand to Removal	5-Day Suspension to Removal

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE FOR MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
11. DISCRIMINATORY PRACTICES (Penalty should take into consideration whether violation is willful/deliberate, or careless/negligent.)		
a. Acting or failing to act on an official matter (including a personnel action) in a manner which improperly takes into consideration an individual's political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition. [This includes discrimination for or against any employee or applicant for employment prohibited by 42 U.S.C. 2000e-16; 29 U.S.C. 631 or 633a; 29 U.S.C. 206(d); 29 U.S.C. 791; or any other law, rule, or regulation.]	5-Day Suspension to Removal	Removal
b. Any reprisal or retaliation action against an individual involved in the EEO complaint process.	5-Day Suspension to Removal	Removal
c. Use of remarks which relate to and insult or denigrate an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition.	Letter of Reprimand to 30-Day Suspension	14-Day Suspension to Removal
d. Negligence or insensitivity to an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition which is determined to be discriminatory and where there is no other finding of overt discrimination.	Letter of Reprimand to 5-Day Suspension	5-Day Suspension to Removal
e. Failure to take appropriate action regarding allegations or findings of discriminatory practices.	5-Day Suspension to Removal	Removal
12. SEXUAL MISCONDUCT		
a. Actual or attempted sexual assault (e.g., rape)	Removal	
b. Inappropriate and/or unwelcome touching or other physical contact.	14-Day Suspension to Removal	30-Day Suspension to Removal
c. Pressure for (or official action based on) sexual favors, including taking action favorable to an employee because of the granting of a sexual favor or denying an action favorable to an employee because of the withholding of a sexual favor.	30-Day Suspension to Removal	Removal
d. Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Letter of Reprimand to 30-Day Suspension	14-Day Suspension to Removal

3 Performance and Conduct (Continued):

D. USDA Guide for Disciplinary Penalties (Department Personnel Manual Chapter 751, Appendix A dated May 1994) (Continued)

USDA GUIDE FOR DISCIPLINARY PENALTIES		
TYPE FOR MISCONDUCT	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
13. PROHIBITED PERSONNEL PRACTICES (Not elsewhere covered.)		
Abuse of authority and commission of a prohibited personnel practice covered by 5 U.S.C. 2302.	Letter of Reprimand to Removal	Removal

4 Administrative Grievance Process (15-PM, Exhibit 4)

The Administrative Grievance system applies to all Federal non-bargaining unit employees of Farm and Foreign Agricultural Services, FFAS, and to all bargaining unit employees **not** covered by a negotiated grievance procedure.

Subject Matter Covered:

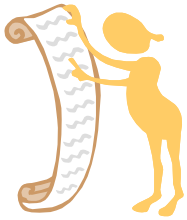
The Administrative Grievance System applies to any matter of concern or dissatisfaction relating to the employment of an employee that is subject to the control of management, including but no limited to:

- Improper application of or failure to follow rules and regulations
- Unfair treatment
- Prohibited personnel practices covered by the EEO complaint system (Exception: discrimination based on race, religion, national origin, gender, age disability and sexual orientation)
- Working conditions
- Performance appraisals (Exception: A summary rating of Results Achieved)
- Non-selection for training
- Suspension from duty without pay for 14 calendar days or less and letters of reprimand or warning
- Changes in assignments, including details and reassignments
- Allegations of partisan political discrimination
- Separation of an employee during a probationary period for reasons of misconduct.

Subject Matter NOT Covered:

- Matters appealable to EEOC, MSPB, OPM, the Federal Labor Relations Authority or the Comptroller General
- Adverse action, except suspension of 14 calendar days or less
- Denial of within-grade salary increase
- Position classification action
- Allegation of complaint of discrimination or sexual harassment
- Reduction-in-force action
- Violation of re-employment priority rights
- Violation of re-employment or reinstatement rights
- Violation of military restoration rights
- Salary-retention decision
- Fitness-for-duty examination
- Life insurance decision
- Health benefits decision

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)



- Non-selection for promotion or lateral reassignment from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion
- A preliminary warning notice of an action that, if effected, would be covered or excluded from coverage under the grievance system
- An action that:
- Terminates a temporary or term promotion
- Returns the employee to either of the following:
- The position from which the employee was temporarily promoted
- A different position, **not** lower in grade, where the employee is informed in advance that the promotion is only temporary
- Return of an officer or employee from SES to the General Schedule during the 1-year period of probation or for less than fully successful executive performance
- The substance of the critical elements and performance standards of an employees position
- Performance appraisal for a member of SES according the 5 U.S.C. 4312 (d).
- Return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probation period
- Termination of a probationer for unsatisfactory performance or conduct
- Reassignment of an SES employee after the employee receives an unsatisfactory rating
- Granting or failure to grant, accepting or failure to accept an employee performance award or a quality salary increase and adopting or failure to adopt an employee suggestion
- The termination of an SES career appointee during probation for unsatisfactory performance
- Actions taken according to terms of a formal agreement voluntarily entered into by an employee are **not** grievable.

Timeframes:

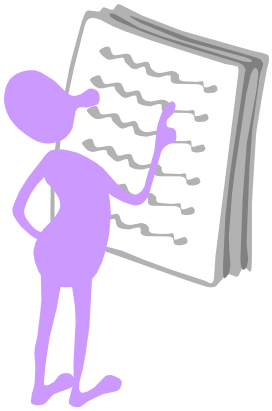
An employee shall present an **informal** grievance within 15 calendar days after either the following:

- The date of the act or occurrence that is the basis for the grievance
- The date he or she became aware of the act or occurrence

NOTE: The informal grievance should be addressed whether or not it is presented within the timeframe, although it may be rejected as a formal grievance.

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

A formal grievance must be filed within 10 calendar days after receiving either of the following:



- The memorandum closing the informal process
- notification of the 10-calendar-day timeframe.

If the grievance is **not** resolved to the satisfaction of the employee, the employee may request factfinding within 10 calendar days after receiving the proposed disposition. The Agency will promptly refer one (1) copy of the grievance file containing all documents considered by the Agency and the grievant's request to the Director, Appeals & Grievance Staff, for assignment to the grievance examiner.

The complete processing of a grievance shall not exceed 90 calendar days. The 90-day period begins on the date that the employee definitively indicates that an informal grievance is being initiated. The completion of processing means one of the following:

- rejection of the grievance
- cancellation of the grievance
- resolution of the grievance to the satisfaction of the grievant
- issuance of a proposed disposition on the grievance that included the employee's rights to request further review by a Departmental grievance examiner.

Labor Management Obligations

Employees covered by a negotiated grievance process would follow the negotiated grievance process procedures.

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System

***--1 Overview**

A Purpose

This exhibit provides FFAS, RD, and NRCS procedures for filing and considering employee grievances. The Administrative Grievance System:

- gives employees an opportunity to:
  - present grievances
  - seek a resolution
- incorporates and supplements the Department Personnel Manual, Chapter 771.

B Delegations of Authority

Authority to resolve a grievance is delegated to the lowest level individual that can make a decision on the matter being resolved.

2 Administrative Grievance Coverage

A Employees Covered

The Administrative Grievance System applies to all:

- nonbargaining unit employees of FFAS, RD, and NRCS
- bargaining unit employees **not** covered by a negotiated grievance procedure.

B Employees Excluded From Coverage

The Administrative Grievance System excludes from coverage all:

- applicants for employment
- bargaining unit employees covered by a negotiated agreement
- members of the Foreign Service of the United States covered under the Foreign Service Grievance System as defined by the Foreign Service Act of 1980.--*

Continued on the next page

6-14-01 Amend. 26 Page 1

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

***--2 Administrative Grievance Coverage (Continued)**

C
Subject Matter Covered

The Administrative Grievance System applies to any matter of concern or dissatisfaction relating to the employment of an employee that is subject to the control of management, including but not limited to:

- improper application of or failure to follow rules and regulations
- unfair treatment
- prohibited personnel practices covered by the EEO complaint system
- working conditions

  Exception: Discrimination based on race, religion, national origin, gender, age, disability, and sexual orientation.

- performance appraisals

  Exception: A Summary Rating of Results Achieved.

- nonselection for training
- suspension from duty without pay for 14 calendar days or less and letters of reprimand or warning
- changes in assignments, including details and reassignments
- allegations of partisan political discrimination
- separation of an employee during a probationary period for reasons of misconduct.

D
Subject Matter Not Covered

The Administrative Grievance System does **not** apply to the following:

- separation of employees serving under Schedules A through C appointments
- the content of published Agency procedures and policy--*

Continued on the next page

6-14-01 Amend. 26 **Page 2**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

*--2 Administrative Grievance Coverage (Continued)

D Subject Matter Not Covered (Continued)

- matters appealable to EEOC, MSPB, OPM, the Federal Labor Relations Authority, or the Comptroller General

  Note: Such decisions include, but are **not** limited to:

  - adverse action, except suspension of 14 calendar days or less
  - denial of a within-grade salary increase
  - position classification action
  - allegation or complaint of discrimination or sexual harassment
  - reduction-in-force action
  - violation of re-employment priority rights
  - violation of re-employment or reinstatement rights
  - violation of military restoration rights
  - salary-retention decision
  - fitness-for-duty examination
  - life insurance decision
  - health benefits decision.

- nonselection for promotion or lateral reassignment from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion

- a preliminary warning notice of an action that, if effected, would be covered or excluded from coverage under the grievance system

- an action that:

  - terminates a temporary or term promotion
  - returns the employee to either of the following:

    - the position from which the employee was temporarily promoted

    - a different position, **not** lower in grade, where the employee is informed in advance that the promotion is only temporary--*

Continued on the next page

6-14-01 Amend. 26 **Page 3**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

*--2 Administrative Grievance Coverage (Continued)

D Subject Matter Not Covered (Continued)

- return of an officer or employee from SES to the General Schedule during the 1-year period of probation or for less than fully successful executive performance
- the substance of the critical elements and performance standards of an employee's position
- performance appraisal of a member of SES according to 5 U.S.C. 4312(d)
- return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period
- termination of a probationer for unsatisfactory performance or misconduct
- reassignment of an SES employee after the employee receives an unsatisfactory rating
- granting or failure to grant, accepting or failure to accept an employee performance award or a quality salary increase, and adopting or failure to adopt an employee suggestion
- the termination of an SES career appointee during probation for unsatisfactory performance
- actions taken according to terms of a formal agreement voluntarily entered into by an employee are **not** grievable.--*

6-14-01 Amend. 26 **Page 4**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

***--3 Definitions**

A Grievance	A grievance is a request by an employee or a group of employees, acting as individuals, for personal relief in a matter of concern or dissatisfaction that is subject to the control of Agency management.
B Factfinder or Agency Grievance Examiner	A factfinder or an Agency grievance examiner is a person appointed to conduct appropriate inquiry into a formal grievance and recommend a decision on the issue or issues of the grievance.
C Bargaining Unit Employee	A bargaining unit employee is an employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority for which a labor organization has been granted exclusive recognition.
D Personal Relief	Personal relief is a specific remedy directly benefitting the grievant. Failure to request personal relief in a grievance may be grounds for rejection of the grievance. **Note:** A request for disciplinary action against another employee is **not** a request for personal relief.--*

Continued on the next page

6-14-01 Amend. 26 **Page 5**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4
(Par. 17)

FFAS Administrative Grievance System (Continued)

***--3 Definitions (Continued)**

E
Grievance File

A grievance file is a file established expressly for the purpose of creating and preserving a record of all documents and evidence pertinent to a grievance. This includes, but is **not** limited to:

- letters and memoranda generated by the person filing the grievance
- letters and memoranda generated by the involved supervisor
- statements of witnesses
- official records
- documents upon which the proposed and final dispositions of the grievance are based.

Note: The grievance file may **not** contain any document or item **not** made available to the grievant for review before a final decision on the grievance.

F
Alternative Dispute Resolution (ADR)

ADR is a series of problem solving tools used to assist in the resolution of conflicts between people or organizations

Examples: Mediation, neutral evaluation, facilitation, and conciliation.--*

6-14-01 Amend. 26 **Page 6**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

***--4 General Processing Requirements**

A Choosing a Representative

Employees are entitled to be accompanied, represented, and advised at any stage of a grievance by a representative of their choice who has been designated in writing.

The representative chosen by an employee may be disallowable if the representative:

- has a conflict of interest or conflict of position
- is required for other work to meet priority needs of the Agency
- would create unreasonable costs for the Government.

An employee may request review of any disallowance of a representative by the Director, Appeals and Grievances Staff, OHRM, who will make a final decision in the matter.

Note: This review should be requested within 7 calendar days of the receipt of disallowance.

B Granting Official Time

The grieving employee and his or her representative shall be granted a reasonable amount of official time, not to exceed 8 hours, to prepare and present the grievance.

The reasonable amount of official time shall be determined at the discretion of the employee's supervisor.

C Resolving or Withdrawing the Grievance

Nothing shall prohibit reasonable attempts by managers to resolve, at any time, a grievance that is being processed. Informal resolutions are encouraged at any stage of the process. The employee may withdraw the formal grievance at any stage of the process by notifying, in writing, the official who is considering the grievance. Any successful resolution or withdrawal of the grievance shall be in writing and communicated to the official who is then considering the grievance.--*

Continued on the next page

6-14-01 Amend. 26 **Page 7**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

FFAS Administrative Grievance System (Continued)

***--4 General Processing Requirements (Continued)**

D
Requesting an ADR Process

An employee may request the ADR process be used to resolve employment-related disputes before or in connection with the administrative grievance process. He or she may contact their servicing personnel office for information on the ADR process.

E
Rejecting EEO Complaints, MSPB, Federal Labor Relations Authority, or OPM Appeals

To avoid dual processing, a dispute over a matter for which an employee has either of the following will be rejected under the Administrative Grievance System:

- an entitlement to file an appeal
- a formal challenge in some other forum.

The grievance may be reinstated if the grievance issues are **not** addressed during the appeal process or any other forum.

The official considering the formal grievance shall:

- inform the grievant that the grievance is being rejected
- return the grievance to the grievant.--*

Continued on the next page

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

***--4 General Processing Requirements (Continued)**

F Canceling or Rejecting Grievances

A formal grievance may be canceled or rejected at any step of the grievance process by the considering official if:

- **no** relief can be granted because of the separation of the grievant
- the relief requested by the grievant is granted
- the matter is raised in another forum in addition to the Administrative Grievance System
- any other action or circumstances results in there being no other basis for other retroactive relief or monetary reward.

The cancellation or rejection of a grievance must:

- be communicated to the grievant, in writing, within 90 calendar days of the initiation of an informal grievance
- advise the grievant of the right to have the cancellation or rejection reviewed by the Director, Appeals and Grievances Staff, OHRM.

G Freedom From Reprisal

Grievants and their representatives shall be free from restraint, coercion, intimidation, or reprisal in presenting a grievance. Allegations of these actions may, at the option of the grievant, be handled according to the either of the following:

- added immediately to the grievance being presented for review
- submitted directly to the Director, Appeals and Grievances Staff, OHRM.--*

Continued on the next page

6-14-01 Amend. 26 **Page 9**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

***--4 General Processing Requirements (Continued)**

H Requesting Payment of Attorney Fees

Employees may request payment of attorney fees in cases where back pay is awarded and the employee's representative otherwise meets the requirements for attorney fees as provided in 5 CFR Part 550. Fees are not payable under any other circumstances.

5 Informal Grievance Procedure

A Submitting an Informal Grievance

An employee who has a grievable issue shall present the matter as an informal grievance to the lowest level individual who can make a decision on the matter being grieved. If this individual is unknown to the employee, the grievance shall be submitted to the employee's immediate supervisor.

B Identifying an Informal Grievance

An informal grievance may be presented either orally or in writing. A written explanation should **not** be required from the employee. However, in presenting a grievance, it is the employee's responsibility to:

- identify the matter of concern
- identify the corrective action sought
- clearly identify that he or she is initiating the grievance process.

C Timeframe for Presentation

An employee shall present an informal grievance within 15 calendar days after either of the following:

- the date of the act or occurrence that is the basis for the grievance
- the date he or she became aware of the act or occurrence.

D Waiving the Informal Process

The informal grievance procedure shall be waived and a formal grievance may be filed in the case of a suspension of 14 calendar days or less. In this situation, an employee may file a formal grievance within 15 calendar days of the effective date of the suspension.--*

Continued on the next page

6-14-01 Amend. 26 **Page 10**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

FFAS Administrative Grievance System (Continued)

***--5 Informal Grievance Procedure (Continued)**

E Resolving the Informal Grievance Use the following steps to resolve informal grievance actions.

Step	Action
1	The individual receiving the informal grievance shall determine whether he or she has the authority to resolve the grievance. If the individual does **not** have the authority to resolve the grievance, the individual shall forward the grievance to the proper level where the grievance can be resolved and inform the grievant of this action.
2	The official who has the authority to resolve the informal grievance shall make a determination as to whether it is possible to resolve the informal grievance.
3	If the informal grievance **cannot** be resolved according to step 2, the official who is considering the grievance shall prepare a memorandum to the grievant that includes: • the grievance issues • the attempts to resolve the grievance issues • the termination of the informal grievance process • the right to file a formal grievance • that a formal grievance may be filed with the supervisor of the official who considered the informal grievance (second level supervisor) • the 10-calendar-day timeframe in which a formal grievance should be filed • that the grievant may elevate the grievance to the Director, Appeals and Grievances Staff, OHRM, if the grievance process is **not** completed within 90 calendar days after initiating the informal grievance.
4	The informal process must be completed by issuing a memorandum or resolution of the grievance within 20 calendar days after its initial presentation. If this deadline is **not** met, the employee may file a formal grievance.

Note: The informal grievance should be addressed whether or not it is presented within the timeframe, although it may be rejected as a formal grievance.--*

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

***--5 Formal Grievance Procedure**

A Filing and Acceptance

All formal grievances shall be filed by submitting the grievance, in writing, to the supervisor of the official who considered the informal grievance (second level supervisor).

The second level supervisor shall:

- inform the employee of acceptance of the formal grievance or reject it as:
  - untimely
  - a matter excluded from coverage
  - **not** meeting a requirement for processing
  - a matter **not** presented as a part of the informal grievance, except as specified in subparagraph 2 C
  - a matter excluded from coverage because it was filed by an employee excluded from coverage
- send a copy of the formal grievance to the Employee Relations Staff within 5 calendar days after receiving the formal grievance.

Within 7 calendar days after receipt of a rejection of a grievance, the employee may request a review of the rejection by the Director, Appeals and Grievances Staff, OHRM.

B Submitting a Formal Grievance

A formal grievance must be submitted in writing. To be acceptable as a grievance, it must:

- be signed by the employee or the designated representative
- state the subject of the grievance
- specify the corrective action being sought.--*

Continued on the next page

6-14-01 Amend. 26 **Page 12**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4
(Par. 17)

FFAS Administrative Grievance System (Continued)

***--5 Formal Grievance Procedure (Continued)**

E
Grievance File Availability

All of the material and information on which the proposed disposition is based shall be provided to the grievant or an authorized representative, along with the proposed disposition, if **not** provided previously.

F
Referral to USDA Grievance Examiner

If the grievance is **not** resolved to the satisfaction of the employee, the employee may request factfinding within 10 calendar days after receiving the proposed disposition. The Agency will promptly refer 1 copy of the grievance file containing all documents considered by the Agency and the grievant's request, to the Director, Appeals and Grievances Staff, OHRM, for assignment to a grievance examiner. The referral by the Agency shall:

- address the merits of any additional arguments or evidence presented by the grievant
- certify that the grievant has received a copy of all documents in the grievance file
- include an index of the grievance file.

The notice from the employee indicating that the proposed disposition does **not** resolve the grievance shall include:

- the matter or issues over which there remains disagreement
- any evidence available to the employee to support the continued request for corrective action.--*

Continued on the next page

6-14-01 Amend. 26 **Page 14**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

***--5 Formal Grievance Procedure (Continued)**

G Appointment of a Grievance Examiner

The Director, Appeals and Grievances Staff, OHRM, will appoint a grievance examiner. The grievance examiner is responsible for:

- conducting any inquiry necessary to resolve any disputes as to facts
- developing sufficient basis on which to recommend a decision.

At the discretion of the grievance examiner, the inquiry may include, but is **not** necessarily limited to, any of the following:

- review of the records and documents
- personal interviews
- written inquiries
- group meetings
- hearings.

H Duties of Grievance Examiner

The grievance examiner will:

- ensure that the employee or designated representative is given an opportunity to review all the information on which a recommended decision will be based and to comment on it
- will send the grievant and the Administrator a recommended decision that contains:
  - a report of findings of fact
  - an analysis of the issues
  - a recommendation of a decision based on the grievance, including any corrective action that may be necessary.--*

Continued on the next page

6-14-01 Amend. 26 **Page 15**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4
(Par. 17)

FFAS Administrative Grievance System (Continued)

***--5 Formal Grievance Procedure (Continued)**

I

Final Decision

The deciding official on a formal grievance shall be the Administrator. The deciding official may:

- issue a final decision to the grievant within 60 calendar days after receiving the request for a final decision without factfinding by a grievance examiner
- accept the grievance examiner's recommendation as the final decision on the grievance
- grant more relief to the grievant than recommended by the grievance examiner
- appeal the grievance examiner's recommendation to the Director, Appeals and Grievances Staff, OHRM, within 15 calendar days after the deciding official received the recommended decision when the recommended decision can be shown to be any of the following:
  - contrary to law, rule, regulation, or published Agency policy
  - supported by less than substantial evidence
  - a precedent of such wide and detrimental impact on the Agency that further review is necessary

  Note: The Director, Appeals and Grievances Staff, OHRM, will render the Department's final decision on the grievance after ensuring that the grievant has had an opportunity to review and comment on the Agency's appeal.
- the decision made by the Administrator or by the Director, Appeals and Grievances Staff, OHRM, is final.--*

6-14-01 Amend. 26 **Page 16**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

*--6 Timeframe for Decisions on Formal Grievances

A Completion of Processing

The complete processing of a grievance shall not exceed 90 calendar days. The 90-day period begins on the date that the employee definitively indicates that an informal grievance is being initiated. "Completion of processing" means 1 of the following:

- rejection of the grievance
- cancellation of the grievance
- resolution of the grievance to the satisfaction of the grievant
- issuance of a proposed disposition on the grievance that included the employee's rights to request further review by a Departmental grievance examiner.

B Final Decision

If the employee decides that the proposed disposition was not acceptable, he or she may request either of the following within 10 calendar days after receiving the proposed disposition:

- a final decision by the Administrator without factfinding

  Note: The Administrator shall render the final decision.

- a further review of the grievance by a grievance examiner. The grievance examiner's recommended decision shall be issued to the grievant and the Administrator.--*

Continued on the next page

6-14-01 Amend. 26 Page 17

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

15-PM	Exhibit 4 (Par. 17)

FFAS Administrative Grievance System (Continued)

***--6 Timeframe for Decisions on Formal Grievances (Continued)**

C Administrator's Decision	Within 20 calendar days after the recommended decision, the Administrator shall adopt 1 of the following decisions: • the grievance examiner's recommended decision • grant additional relief • exercise the right of appeals to the Director, Appeals and Grievances Staff, OHRM.
D OHRM Grievance Examiner	If the 90-day processing period is exceeded by the Agency, the employee may request that the grievance be assigned to a grievance examiner by the Director, Appeals and Grievances Staff, OHRM. The grievance examiner shall: • determine the most appropriate method of resolving the grievance • use mediation or inquiry to make a recommended decision on the grievance.
E Labor Management Obligations	Where exclusive representation exists, bargaining may be requested to the extent allowed by applicable statutes. Where contract language already addresses these policies and procedures for bargaining unit employees, contract language prevails.--*

6-14-01 Amend. 26 **Page 18**

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

A. Grievance System for County Employees (Handbook 22-PM)

The Grievance system for county employees is found in 22-PM, Part 10.5. The grievance system applies to all current county employees under permanent and temporary appointments.

A State Grievance Board in each State administers the county office employee grievance system. The Board consists of 4 members, each of whom serve a 2-year term. Term begins January 1. One Board member is selected from each of the following job titles and classifications: 1) State office employee familiar with administrative processes shall be the Chairperson, 2) County Executive Director (CED), 3) County office program assistant and 4) County Office Committee (COC) member. The State Executive Director (SED) and the president of the State NASCOE affiliate shall select Board members and alternates as mutually agreed upon.

The grievance system applies to any concern or dissatisfaction that involves the employment of a covered employee, subject to State or County Office management's control, which is not covered by another form of appeals or complaint process. The system applies to, but is not limited to the following:

- Working conditions
- Improper application of or not following rules and regulations
- Unfair treatment
- Performance ratings, not including warnings to improve performance
- Nonselection for training opportunities
- Letters of reprimand

The grievance system does NOT apply to:

- Involuntary separations, such as poor performance, misconduct or RIFS
- Allegations of discrimination
- Classification and pay plans
- Nonselection for promotion, or withholding of a promotion
- Any action affecting another person. Action grieved must be personal to the aggrieved party
- Selections to the COT program
- The content or enforcement of published agency procedures and policy
- The substance of the elements and standards of an employee

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

A. Grievance System for County Employees (Continued)

- The granting or failing to grant an award or the decision to adopt or not adopt a suggestion
- The receiving or failing to receive a performance award or QSI
- The termination of a probationary employee
- A salary offset determination
- A preliminary warning notice of an action which, if effected, would be covered or excluded from coverage under the grievance system
- Notice of performance improvement period
- Disciplinary suspension of 14 calendar days or less
- Matters appealable to the Comptroller General
- Placement or nonplacement of names on STC certificate of eligible candidates for CED positions

All grievances shall be presented in writing within 15 days of the action grieved or 15 days of becoming aware of an action which is grievable and filed with the Chairperson, State Grievance Board. The grievance must be signed by the grievant, clearly and concisely state the subject of the grievance, and specify the corrective action being sought.

Upon receipt of a grievance, the Chairperson shall review the grievance and within 15 days inform the grievant of the acceptance or rejection of the grievance. A grievance may be rejected if: 1) untimely filed, 2) a matter excluded from coverage or 3) not meeting a requirement for processing.

A grievance rejected as not meeting a requirement for processing may be resubmitted after deficiencies are corrected. The grievant must resubmit the grievance within 15 days of receiving notice of deficiencies. A grievance rejected as untimely or as a matter excluded from coverage may be appealed to DAFO. The appeal must be filed with 15 days of receipt of the rejection notice.

After accepting a grievance, the Chairperson shall notify the grievant of the date, time and place where the Board will receive evidence about the grievance. The notice shall be given at least 10 days before the scheduled hearing date. All hearings must be scheduled within 30 days after accepting the grievance as properly filed.

The grievant may withdraw the grievance at any time for any reason by notifying the Chairperson.

The grievant shall notify the Chairperson if he or she does not want a hearing. The decision of the Board shall then be only on the written record.

4 Administrative Grievance Process (15-PM, Exhibit 4) (Continued)

A. Grievance System for County Employees (Continued)

The grievant and any employee representative shall be:

- granted a reasonable period of time (not to exceed 8 hours) to prepare for the hearing.
- A reasonable period of official time to present their grievance ore response to the Board
- Official travel expenses for any approved appearance before the Board.

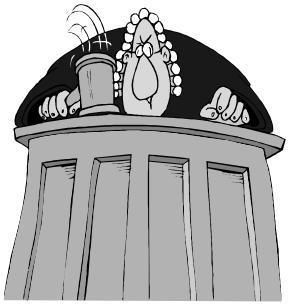
The Board shall conduct any inquiry necessary to resolve any disputes as to facts and to develop sufficient basis on which to recommend a decision. The Board hearing is not a trial-type hearing but is a fact-finding inquiry. The Board shall determine which witnesses are to be called from those proposed by the grievant or other parties. The Board may call its own witnesses. Cross examination of witnesses by the grievant or other parties shall not be allowed. Only Board members may ask questions of witnesses.

The Board shall send the SED a written recommended decision that contains: 1) a report of its findings of fact, 2) an analysis of the issues, 3) a determination on the grievance, including any corrective action that may be necessary, 4) a statement of the rationale for the determination, and 5) the hearing record or transcript. If the SED is involved in the grievance the recommended decision will be sent to the Deputy Administrator for Field Operation (DAFO).

Within 15 days after receiving the recommended decision the SED shall accept, reject or modify the recommended decision and issue a final decision on the grievance to the grievant and the person or persons against whom the grievance was filed.

The SED's or DAFO's final decision shall not be subject to further administrative review unless it differs from the Board's recommended decision. If the SED's decision differs the grievant may request final review by the DAFO. Any request for review by the grievant must be filed in writing within 15 days of receiving the final decision.

5 Appeal Procedures (MSPB & EEO)



Merit Systems Protection Board Procedures (MSPB)

www.MSPB.GOV

1. What is the Merit Systems Protection Board (MSBP)?

   It is an independent agency in the Executive branch of the Federal Government that serves as the guardian of the Federal merit systems. The Board is comprised of three members who are appointed by the president and confirmed by the Senate. They serve overlapping, non-renewable 7-year terms. The Board is bipartisan. No more than tow of its members may be from the same political party. The Board's headquarters are in Washington, D.C. with regional and field offices in major cities.

2. What kinds of actions may be appealed to the Board?

   Under the Civil Service Reform Act (CSRA), the majority of the cases are appeals of agency adverse actions – removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less. Other types of actions that may be appealed to the Board include: performance-based removals or reductions in grade, denials of within grade salary increases, reduction-in-force actions, OPM suitability determinations, OPM employment practices, OPM determinations in retirement matters, denials of restoration or reemployment rights, and terminations of probationary employees under certain circumstances.

3. What if an action isn't appealable to the Board?

   Some actions that are not appealable to the Board may be appealable to OPM or may be covered by an agency grievance procedure.

   If the employee is a member of a bargaining unit, actions under a negotiated grievance procedure may be grieved in accordance with that procedure.

   If a personnel action (whether appealable to the Board or not) is taken or about to be taken as a result of a prohibited personnel practice, the employee may file a complaint with the Office of Specials Counsel, asking the Special Counsel to seek corrective action from the Board on his or her behalf.

4. Who may appeal an adverse action to the Board?

   Employees in the competitive service who have completed a 1-year probationary or trial period;

   Veteran's preference-eligible employees with at least one year of continuous employment in the same or similar positions outside the competitive service;

5 Appeal Procedures (MSPB & EEO) (Continued)

Postal Service supervisors and managers, and Postal Service employees engaged in personnel work (other than those in nonconfidential clerical positions), who have completed one year or current continuous service in the same or similar positions; and

Excepted service employees, other than preference-eligibles, who are not serving a probationary or trail period and who have completed two years of current continuous service in the same or similar positions in an agency.

5. Do agencies have to advise employees of their right to appeal personnel actions to the Board?

   When an agency takes an appealable action against an employee, the agency must provide the employee with: 1) a notice of the time limits for appealing to the Board, 2) the address of the appropriate Board regional or filed office for filing the appeal, 3) a copy or access to a copy of the Board's regulations, 4) a copy of the Board's appeal form, and 5) a notice of any rights concerning the agency or a negotiated grievance procedure.

6. Does the Board hear appeals from employees who are covered by a negotiated grievance procedure?

   If an employee is a member of a bargaining unit that is represented by a union or an association, the bargaining agreement may have a negotiated grievance procedure available to the employee. Many times, the grievance procedure will cover personnel actions that by law may otherwise be appealed to the Board. If a bargaining unit employee is covered by such a "broad scope" grievance procedure, then the employee has a choice between filing either a grievance with the agency or an appeal with the Board, but may not do both.

7. Does the Board hear complaints of discrimination?

   Generally, yes, if the personnel action can be appealed. In an employee alleges discrimination in connection with most actions that are otherwise appealable to the Board, the Board has jurisdiction over the matter. Discrimination allegations that do not involve actions within the Board's jurisdiction may be pursued through the employing agency and the Equal Employment Opportunity Commission (EEOC).

8. How does an employee file an appeal?

   An employee must file an appeal in writing with the Board's regional or filed office serving the area where the employee's duty station was located when the action was taken.

5 Appeal Procedures (MSPB & EEO) (Continued)

An appeal must be filed within 30 calendar days from the effective date of the action, if any, or within 30 calendar days after the date of receipt of the agency's decision, whichever is later. If the 30th day falls on a Saturday, Sunday, or Federal holiday, the filing deadline is extended to the next work day.

If the employee and the agency mutually agree in writing to submit the dispute to an alternative dispute resolution (ADR) process, the 30-day filing time limit is automatically extended to 60 days.

Appeals may be filed by mail, by facsimile, by commercial overnight delivery, or by hand delivery. The date of filing by mail is considered to be the postmark date. The date of facsimile is the date of the facsimile. The date of filing by commercial overnight delivery is the date you deliver the appeal to the commercial overnight delivery service.

9. Does the appeal have to be in a particular format?

   Although an appeal may be in any format, it must be in writing and contain all of the information specified in the Board's regulations. An appeal must be signed by the employee (hereafter Appellant) and his or her representative if one has been designated.

10. May the agency respond to the appeal?

    An agency has the right to respond to an appeal but must do so within 20 calendar days of the date of the Board's order acknowledging receipt of the appeal.

11. Who decides the appeal?

    When a Board regional or field office receives an appeal, the case is assigned to an administrative judge (AJ) in that office. The AJ will issue a decision after considering all of the relevant evidence in the case.

12. Are hearings held on all appeals?

    Once it is established that the appeal is timely filed and the Board has jurisdiction, the Appellant has a right to a hearing on the merits of his or her case. The Appellant may present evidence, including the testimony of witnesses, at the hearing. However, the Appellant may waive the right to a hearing and choose instead to have the appeal decided on the basis of the written record, which will include all pleadings, documents, and other materials filed in the proceeding. Sometimes hearings are conducted by telephone or video conferencing rather than in person.

5 Appeal Procedures (MSPB & EEO) (Continued)

13. Who has the burden of proof?

The Agency: The agency has the burden of proving that it was justified in taking the action. If the agency meets its burden of proof, the Board must decide in the favor of the agency, unless you show that there was "harmful error" in the agency's procedures, that the agency decision was based on a prohibited personnel practice, or that the decision was not in accordance with the law.

The Appellant: The Appellant has the burden of proving that his or her appeal is within the Board's jurisdiction and that it was timely filed. The Appellant also has the burden of proving and "affirmative defenses" that are raised, for example, discrimination or reprisal for whistleblowing. The Appellant also has the burden of proof in retirement cases.

14. Is the decision issued by the AJ final?

The initial decision of the AJ will become the final decision of the Board 35 days after the date of the decision unless a party files a petition for review with the 3-member Board in Washington with 35 calendar days of the date of the initial decision. A petition for review by the MSPB must be filed within 35 days after the date the initial decision is issued or within 30 days after the date the Appellant received the initial decision, whichever is later.

15. How does the Board decide whether to grant a petition for review?

The Board may grant a petition for review when it is established that there is new significant evidence that was not available when the record was closed, or that the AJ's decision is based on an erroneous interpretation of law or regulations. The Board's decision on a petition for review constitutes final administrative action.

16. If the initial decision is in the Appellant's favor, and the agency (or another party) files a petition for review, does the Appellant have to wait for relief until the Board issues a decision?

If the Appellant is the prevailing party, the agency will grant any relief provided in the initial decision pending the outcome of any petition for review. However, "interim relief" will not be granted if the AJ determines that it is not appropriate. If the decision requires the Appellant return to work, the agency does not have to take this action if it determines that such a return would be unduly disruptive. However, it still has to restore the Appellant to pay and benefits status. The granting of interim relief does not require the payment of back pay or attorney fees.

5 Appeal Procedures (MSPB & EEO) (Continued)

17. What actions may an AJ take on appeals?

    The initial decision of the AJ may dismiss the appeal if the matter is not within the Board's jurisdiction or if the appeal was not filed within the required time limit and good cause for the untimely filing is not shown. Appeals that are not dismissed may be settled voluntarily by the parties. If the parties wish to have the settlement agreement enforceable by the Board, they must ask the AJ to enter the agreement into the record. In appeals that are decided on the merits (not dismissed or settled), the decision of the AJ may affirm the agency's action, reverse the action, or – in certain cases- mitigate (modify) the penalty imposed by the agency.

18. What actions may the Board take on petitions for review?

    The Board may dismiss a petition if it determines that the matter is not within the Board's jurisdiction or if the petition was not filed within the required time limit and good cause for the untimely filing is not shown. The Board may deny a petition if it does meet the criteria for review. If the Board grants a petition, its final decision may affirm or reverse the initial decision of the AJ in whole or in part. The Board may also modify the decision of the AJ, vacate it or remand (send back) the case to the AJ for further processing.

19. What appeals are there from a final decision by the Board?

    The Appellant may request court review. Once an initial decision of an AJ has become final, or the Board has issued a final decision on a petition for review, the Appellant may seek review of the final decision by the U.S. Court of Appeals for the Federal Circuit. The court must receive the Appellant's request for review within 60 days of receipt of the Board's final decision. The court normally will not waive this time limit and filings that do not meet the deadline will be dismissed.

    In cases involving allegations of discrimination, the Appellant may seek review of the final Board decision by the Equal Employment Opportunity Commission (EEOC) or may file a civil action in an appropriate U.S. district court within 30 days of receipt of the decision.

5 Appeal Procedures (MSPB & EEO) (Continued)

20. What happens if an Appellant appeals a case involving an allegation of discrimination to the EEOC?

    In a case appealable to the Board that involves an allegation of discrimination (a "mixed case"); you may ask the EEOC to review the Board's final decision on the discrimination issue. If the EEOC disagrees with the Board's decision on the discrimination issue, the case is returned to the Board. If the Board does not adopt the EEOC decision, then the case is referred to a Special Panel made up of a Chairman appointed by the President, one member of the Board, and one EEOC commissioner. The Special Panel issues the final decision in the case, which them may be appealed to an appropriate U.S. district court.

21. Do the procedures described above apply to all appeals to MSPB?

    Some laws that authorize appeals to MSPB include procedural requirements that differ from the general procedures described above. Such laws may require that you first exhaust the procedures of another agency before filing with MSPB, and the time limits for filing differ from those discussed above. Also, because the basis for an appeal to MSPB is an alleged violation of one of these laws, agencies are not expected to advise employees of an alleged violation and a right to appeal to MSPB. Laws with different procedural requirements include the following:

    - Whistleblower Protection Act of 1989 (Public Law No. 101-12) – This law authorizes an appeal to MSPB if an employee alleges that he or she was subject to an agency action that was taken or threatened (or is about to be taken or threatened) because of certain legal disclosures of information, commonly known as whistleblowing. Unless the matter is directly appealable to the Board under law, rule, or regulation, the employee must first file a complaint with the Office of Special Counsel and exhaust the procedures of that office.

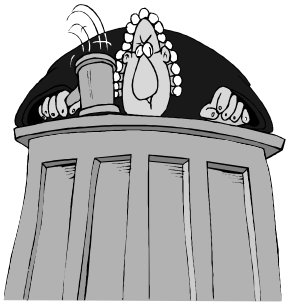
    - Presidential and Executive Office Accountability Act (Public Law No. 104-331) – This law authorizes appeals to MSPB by employees that allege violations of certain workplace laws, including the Family and Medical Leave Act and the Fair Labor Standards Act. The employee must first exhaust a mandatory period of counseling and mediation with the agency. Any subsequent appeal to MSPB must be filed no earlier than the 30th day and no later than the 90th day after receiving notice of the end of the mandatory period of counseling and mediation.

5 Appeal Procedures (MSPB & EEO) (Continued)

- Uniformed Services Employment and Reemployment Rights Act (USERRA) (Public Law No. 103-353) – This law authorizes an appeal to MSPB based on an agency's alleged violation of an employee's employment or reemployment rights following the employee's service in a uniformed service (including discrimination based on such service or on the employee's status as a veteran). The employee has the option of appealing directly to MSPB or filing a complaint with the Department of Labor's Veteran's Employment and Training Service (DOL/VETS). If an employee files with DOL/VETS, he or she must first exhaust that agency's procedure and may appeal to MSPB later if DOL/VETS cannot resolve the matter.

- Veterans Employment Opportunities Act (VEOA) (Public Law No. 105-339) – This law authorizes an appeal to MSPB based on an agency's alleged violation of any law or regulation relating to veteran's preference. The employee must first file a complaint with DOL/VETS and allow that agency 60 days to resolve the matter. If DOL/VETS advises the employee that it ahs been unable to resolve the matter, an appeal to MSPB must be filed within 15 days after the date the employee receives the DOL/VETS notice.

5 Appeal Procedures (MSPB & EEO) (Continued)



Federal EEO Complaint Process www.EEO.GOV

1. Contact EEO Counselor

Persons who believe they have been discriminated against must contact an agency EEO counselor prior to filing a formal complaint of discrimination. The person must initiate counselor contact with 45 days of the matter alleged to be discriminatory. **29 CFR Section 1614.105(a) (1)**

This time limit shall be extended where the aggrieved person shows that: he or she was not notified o the time limits and was not otherwise aware of them; he or she did not and reasonably should not have known that the discriminatory matter occurred; despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits. **29 CFR 1614.105(a) (2).**

2. EEO Counseling

EEO counselors provide information to the aggrieved individual concerning how the federal sector EEO process works, including time frames and appeal procedures, and attempt to informally resolve the matter. At the initial counseling session, counselors must advise individuals in writing of their rights and responsibilities in the EEO process, including the right to request a hearing before an EEOC Administrative Judge or an immediate final decision from the agency following its investigation of the complaint. Individuals must be informed of their right to elect between pursuing the matter in the EEO process under part 1614 and a grievance procedure (where available) or the Merit Systems Protection Board appeal process (where applicable). The counselor must also inform the individuals of their right to proceed directly to court in a lawsuit under the Age Discrimination in Employment Act, of their duty to mitigate damages, and that only claims raised in pre-complaint counseling may be alleged in a subsequent complaint filed with the agency. **29 CFR Section 1614.105(b) (1).**

Counseling must be completed within 30 days of the date the aggrieved person contacted the agency's EEO office to request counseling. If the matter is not resolved in that time period, the counselor must inform the individual in writing of the right to file a discrimination complaint. This notice (Notice of Final Interview) must inform the individual that a complaint must be filed within 15 days of receipt of the notice, identify the agency official with whom the complaint must be filed, and of the individual's duty to inform the agency if he or she is represented. **29 CFR Section 1614.105(d)**.

5 Appeal Procedures (MSPB & EEO) (Continued)

The 30-day counseling period may be extended for an additional 60 days: 1) where the individual agrees to such extension in writing; or 2) where the aggrieved person chooses to participate in an ADR procedure. If the claim is not resolved before the 90th day, the Notice of Final Interview described above must be issued to the individual. **29 CFR Sections 1614.105(e), (f)**

When a complaint is filed the EEO counselor must submit a written report to the agency's EEO office concerning the issues discussed and the actions taken during the counseling. **29 CFR Section 1614.105(c)**

3. Formal complaints of discrimination

A formal complaint must be filed within 15 days of receipt of the Notice of Final Interview. The complaint must be a signed statement from the complainant or the complainant's attorney, containing the telephone number and addresses of the parties and must describe generally the action or practice which forms the basis of the complaint. **29 CFR Section 1614.106**

A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the AJ to amend a complaint to include issues or claims like or related to those raised n the complaint.

The agency must acknowledge receipt of the complaint in writing and inform the complainant of the date on which the complaint was filed, of the address of the EEOC office where a request for a hearing should be sent, that the complainant has the right to appeal the agency's final action or dismissal of a complaint, and that the agency must investigate the complaint within 180 days of the filling date. The agency's acknowledgement must also advise the complaint that when a complaint has been amended, the agency must complete the investigation within the earlier of: 1) 180 days after the last amendment to the complaint; or 2) 360 days after the filing of the original complaint. A complainant may request a hearing from an EEOC AJ on the consolidated complaints any time after 180 days from the date of the first filed complaint. **29 CFR Section 1614.106(e)**

5 Appeal Procedures (MSPB & EEO) (Continued)

4. Dismissal of Complaints

Prior to a request for a hearing, in lieu of accepting a complaint for investigation an agency may dismiss an entire complaint for any of the following reasons: 1) failure to state a claim, or stating the same claim that is pending or has been decided by the agency or the EEOC; 2) failure to comply with the time limits; 3) filing a complaint on a matter that has not been brought to the attention of an EEO counselor and which is not like or related to the matters counseled; 4) filing a complaint which is the basis of a pending civil action, or which was the basis of a civil action already decided by a court; 5) where the complainant has already elected to pursue the matter through either the negotiated grievance procedure or in an appeal to the Merit Systems Protection Board; 6) where the matter is moot or merely alleges a proposal to take a personnel action; 7) where the complainant cannot be located; 8) where the complainant fails to respond to a request to provide relevant information; 9) where the complaint alleges dissatisfaction with the processing of a previously filed complaint; 10) where the complaint is part of a clear pattern of misuse of the EEO process for purposes other than the prevention and elimination of employment discrimination. **29 CFR Section 1614.107**

If an agency believes that some, but not all, of the claims in a complaint should be dismissed for the above reasons, it must notify the complainant in writing of the rationale for this determination, identify the allegations which will not be investigated, and place a copy of this notice in the investigation file. This determination shall be reviewable by an EEOC AJ if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken by the agency on the remainder of the complaint. **29 CFR Section 1614.107 (b)**

5. Investigations

Investigations are conducted by the agency. The agency must develop an impartial and appropriate factual record upon which to make findings on the claims raised by the complaint. An appropriate factual record is defined in the regulations as one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. **29 CFR 1614.108(b)**

The investigation must be completed within 180 days from the filing of the complaint. A copy of the investigative file must be provided to the complainant, along with a notification that, within 30 days of receipt of the file, the complainant has the right to request a hearing and a decision from an EEOC AJ or may request an immediate final decision from the agency. **29 CFR Section 1614.108(f)**

5 Appeal Procedures (MSPB & EEO) (Continued)

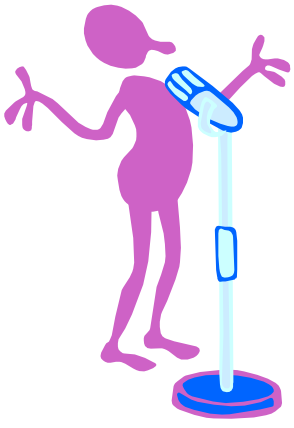
An agency may make an offer of resolution to a complainant who is represented by an attorney at any time after the filing of a complaint, but not later than the date an AJ is appointed to conduct a hearing. An agency may make an offer of resolution to a complainant, represented by an attorney or not, after the parties have received notice that an AJ has been appointed to conduct a hearing, but not later than 30 days prior to a hearing.

Such offer of resolution must be in writing and include a notice of explaining the possible consequences of failing to accept the offer. If the complainant fails to accept the offer within 30 days of receipt, and the relief awarded in the final decision on the complaint is not more favorable than the offer, then the complainant shall not receive payment from the agency for attorney's fees or costs incurred after the expiration of the 30-day acceptance period. **29 CFR 1614.109(c)**

6. Hearings

Requests for hearing must be sent by the complainant to the EEOC office indicated in the agency's acknowledgment letter, with a copy to the agency's EEO office. Within 15 days of receipt of the request for a hearing, the agency must provide a copy of the complaint file to the EEOC. The EEOC will than appoint an AJ to conduct a hearing. **29 CFR Section 1614.108(g)**

An EEOC AJ may dismiss a complaint for any of the reasons set out above under Dismissals. **29 CFR Section 1614.109(b)**



Prior to the hearing, the parties may conduct discovery. The purpose of discovery is to enable a party to obtain relevant information for the preparation of the party's case. Each party initially bears their own costs for discovery, unless the AJ requires the agency to bear the costs for the complainant to obtain depositions or any other discovery because the agency has failed to complete its investigation in a timely manner or has failed to adequately investigate the allegations. Agencies provide for the attendance of all federal employees approved as witnesses by the AJ. Hearings are considered part of the investigative process, and are closed to the public. The AJ conducts the hearing and receives relevant information or documents as evidence. The hearing is recorded and the agency is responsible for paying for the transcripts of the hearing. Rules of evidence are not strictly applied to the proceedings. If the AJ determines that some or all facts are not in genuine dispute, he or she may limit the scope of the hearing or issue a decision without a hearing (summary judgment).

5 Appeal Procedures (MSPB & EEO) (Continued)

The AJ must conduct the hearing and issue a decision on the complaint within 180 days of receipt by the AJ of the complaint file from the agency. The AJ will send copies of the hearing record, the transcript and the decision to the parties. If an agency does not issue a final order within 40 days of receipt of the AJ's decision, then the decision becomes the final action by the agency in the matter. **29 CFR 1614.109(i)**

7. Final Action by Agencies

When an AJ has issued a decision (either a dismissal, a summary judgment decision or a decision following a hearing), the agency must take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the AJ's decision.

The final order must notify the complainant whether or not the agency will fully implement the decision of the AJ, and shall contain notice of the complainant's right to appeal to the EEOC or to file a civil action. If the final order does not fully implement the decision of the AJ, the agency must simultaneously file an appeal with the EEOC and attach a copy of the appeal to the final order. **29 CFR Section 1614.110 (a)**

When an AJ has not issued a decision (i.e., when an agency dismisses an entire complaint under 1614.107, receives a request for an immediate final decision or does not receive a reply to the notice providing the complainant the right to either request a hearing or an immediate final decision), the agency must take final action by issuing a final decision. The agency's final decision will consist of findings by the agency on the merits of each issue in the complaint. Where the agency has not processed certain allegations in the complaint for procedural reasons set out in 29 CFR 1614.107, it must provide the rationale for its decision not to process the allegations. The agency's decision must be issued within 60 days of receiving notification that the complainant has requested an immediate final decision. The agency's decision must contain notice of the complainant's right to appeal to the EEOC, or to file a civil action in federal court. **29 CFR Section 1614.110(b)**

8. Appeals to the EEOC

Several types of appeals may be brought to the EEOC. A complainant may appeal an agency's final action or dismissal of a complaint within 30 days of receipt.
29 CFR Sections 1614.401(a), 1614.402(a)

A grievant may appeal the final decision of the agency, arbitrator or the FLRA on a grievance when an issue of employment discrimination was raised in the grievance procedure. **29 CFR Section 1614.401(d)**

5 Appeal Procedures (MSPB & EEO) (Continued)

If the agency's initial action and order do not fully implement the AJ's decision, the agency must appeal to the EEOC.
29 CFR Section 1614.110(a); 29 CFR Section 1614.401(b)

A complainant may appeal to the EEOC for a determination as to whether the agency has complied with the terms of a settlement agreement or decision.
29 CFR Section 1614.504(b)

If the complaint is a class action, the class agent or the agency may appeal an AJ's decision accepting or dismissing all or part of the class complaint. A class agent may appeal a final decision on a class complaint. A class member may appeal a final decision on an individual claim for relief pursuant to a finding of class-wide discrimination. Finally, both the class agent or the agency may appeal from an AJ decision on the adequacy of a proposed settlement of a class action.
29 CFR Section 1614. 401(c)

Appeals must be filed with the EEOC's Office of Federal Operations (OFO). Any statement or brief on behalf of a complainant in support of an appeal must be submitted to OFO within 30 days of filing the notice of appeal. Any statement or brief on behalf of the agency in support of its appeal must be filed within 20 days of filing the notice of appeal. An agency must submit the complaint file to OFO within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the agency. Any statement or brief in opposition to an appeal must be submitted to OFO and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal has been filed, within 60 days of receipt of the appeal.
29 CFR Section 1614.403

The EEOC has the authority to draw adverse inferences against a party failing to comply with its appeal procedures or requests for information.
29 CFR Section 1614.404(c)

The decision on an appeal from an agency's final action is based on a de novo review, except that the review of the factual findings in a decision by an AJ is based on a substantial evidence standard of review. **29 CFR Section 1614.405(a)**

A party may request that the EEOC reconsider its decision within 30 days of receipt of the Commission's decision. Such requests are not a second appeal, and will be granted only when the previous EEOC decision involved a clearly erroneous interpretation of material fact or law; or when the decision will have a substantial impact on the policies, practices or operations of the agency. **29 CFR Section 1614.405(b)**

5 Appeal Procedures (MSPB & EEO) (Continued)

The EEOC's decision will be based on a preponderance of the evidence. The decision will also inform the complainant of his or her right to file a civil action.

9. Civil Actions

Prior to filing a civil action under Title VII of the Civil rights Act of 1964 or the Rehabilitation Act of 1973, a federal sector complainant must first exhaust the administrative process set out at 29 CFR Part 1614. "Exhaustion" for the purposes of filing a civil action may occur at different stages of the process. The regulations provide that civil actions may be filed in an appropriate federal court: 1)within 90 days of receipt of the final action where no administrative appeal has been filed; 2) after 180 days from the date of filing a complaint if an administrative appeal has not been filed and final action has not been taken; 3) within 90 days of receipt of the EEOC's final decision on an appeal; or 4) after 180 days from the filing of an appeal with the EOC if there has been no final decision by the EEOC. **29 CFR Section 1614.408**

Under the Age Discrimination in Employment Act (ADEA), a complainant may proceed directly to federal court after giving the EEOC notice of intent to sue. **29 CFR Section 1614.201**

An ADEA complainant who initiates the administrative process in 29 CFR Part 1614 may also file a civil action within time frames noted above. **29 CFR Section 1614.408**

10. Class Complaints

Class complaints of discrimination are processed differently than individual complaints. **29 CFR Section 1614.204**

The employee or applicant who wishes to file a class complaint must first seek counseling and be counseled, just like an individual complaint. However, once counseling is completed the class complaint is not investigated by the agency. Rather, the complaint is forwarded to the nearest EEOC Field or District Office, where an EEOC AJ is appointed to make decision as to whether to accept or dismiss the class complaint. The AJ examines the class to determine whether it meets the class certification requirements of numerosity, commonality, typicality and adequacy of representation. The AJ may issue a decision dismissing the class because it fails to meet any of these class certification requirement, as well as for any of the reasons for dismissal discussed above for individual complaints.

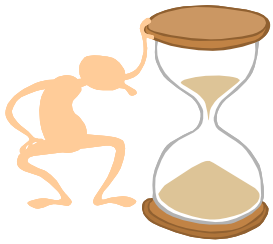
5 Appeal Procedures (MSPB & EEO) (Continued)

A class complaint may begin as an individual complaint of discrimination. At a certain point, it may become evident that there are many more individuals than the complainant affected by the issues raised in the individual complaint. EEOC's regulations provide that a complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claims raised in an individual complaint. **29 CFR 1614.204(b)**

The AJ transmits his or her decision to accept or dismiss a class complaint to the class agent and the agency. The agency must then take final action by issuing a final order within 40 days of receipt of the AJ's decision. The final order must notify the agent whether or not the agency will implement the decision of the AJ. If the agency's final order does not implement the AJ's decision, the agency must simultaneously appeal the AJ's decision to the EEOC's OFO. A copy of the agency's appeal must be appended to the agency's final order. **29 CFR Section 1614.204(d) (7)**

A dismissal of a class complaint shall inform the class agent either that the complaint is being filed on that date as an individual coolant and processed accordingly, or that the complaint is also dismissed as an individual complaint for one of the reasons for dismissal (section 4 above). In addition, a dismissal must inform the class agent of the right to appeal to the EEOC's OFO or to file a civil action in federal court.

When a class complaint is accepted, the agency must use reasonable means to notify the class members of the acceptance of the class complaint, a description of the issues accepted as part of the complaint, an explanation of the binding nature of the final decision or resolution on the class members, and the name, address and telephone number of the class representative. 29 CFR Section 1614.204(e). In lieu of an investigation by the agency, an EEOC AJ develops the record through discovery and a hearing. The AJ then issues a recommended decision to the agency. Within 60 days of receipt of the AJ's recommended decision on the merits of the class complaint, the agency must issue a final decision which either accepts, rejects or modifies the AJ's recommended decision. If the agency fails to issue such a decision within that timeframe, the AJ's recommended decision becomes the agency's final decision in the class complaint.



When discrimination is found in the final decision and a class member believes that he or she is entitled to relief, the class member may file a written claim with the agency within 30 days of receipt of notification by the agency of its final decision. The EEOC AJ retains jurisdiction over the complaint in order to resolve disputed claims by class members. The claim for relief must contain a specific showing that the complainant is a class member entitled to relief. The EEOC's regulations provide that, when a finding of discrimination against a class has been made, there is a presumption of

5 Appeal Procedures (MSPB & EEO) (Continued)

discrimination as to each member of the class. The agency must show by clear and convincing evidence that any class member is not entitled to relief. The agency must issue a final decision on each individual claim for relief within 90 days of filing. Such decision may be appealed to the EEOC's OFO, or a civil action may be filed in federal court. **29 CFR Section 1614.204(l) (3)**

A class complaint may be resolved at any time by agreement between the agency and the class agent. Notice of such resolution must be provided to all class members, and reviewed and approved by an EEOC AJ. If the AJ finds that the proposed resolution is not fair to the class as a whole, the AJ will issue a decision vacating the agreement, and may replace the class agent with some other eligible class member to further process the class complaint. Such decision may be appealed to the EEOC. If the AJ finds that the resolution is fair to the class as a whole, the resolution is binding on all class members. **29 CFR Section 1614.204(g)**

11. Grievances

Persons covered by collective bargaining agreements which permit allegations of discrimination to be raised in the grievance procedure, and who wish to file a complaint or grievance on an allegation of employment discrimination, must elect to proceed either under the procedures of 29 CFR Part 1614 or the negotiated grievance procedures, but not both. **29 CFR Section 1614.301(a)**

An election to proceed under Part 1614 is made by the filing of a formal complaint, and an election to proceed under the negotiated grievance procedures is made by filing a grievance. Participation in the pre-complaint (informal) procedures of Part 1614 is not an election of the 1614 procedures.

12. Mixed Case Complaints

Some employment actions which may be the subject of a discrimination complaint under Part 1614 may also be appealed to the Merit Systems Protection Board (MSPB). In such cases, the employee must elect to proceed with a complaint as a "mixed case complaint" under Part 1614, or a "mixed case appeal" before the MSPB. Whichever is filed first is considered an election to proceed in that forum. **29 CFR Section 1614.302**

Mixed case complaints are processed similarly to other complaints of discrimination, with the following notable exceptions: 1) the agency has only 120 days from the date of the filing of the mixed case complaint to issue a final decision, and the complainant may appeal the matter to the MSPB or file a civil action any time thereafter; 2) the

5 Appeal Procedures (MSPB & EEO) (Continued)

complainant must appeal the agency's decision to the MSPB, not the EEOC, within 30 days of receipt of the agency's decision.; 3) at the completion of the investigation the complainant does not have the right to request a hearing before an EEOC AJ, and the agency must issue a decision within 45 days. **29 CFR Section 1614.302(d)**

Individuals who have filed either a mixed case complaint or a mixed case appeal, and who have received a final decision from the MSPB, may petition the EEOC to review the MSPB final decision.

In contrast to non-mixed matters, individuals who wish to file a civil action in mixed-case matters must file within 30 days (not 90) of receipt of: 1) the agency's final decision; 2) the MSPB's final decision; or 3) the EEOC's decision on a petition to review. Alternatively, a civil action may be filed after 120 days from the date of filing the mixed case complaint with the agency or the mixed case appeal with the MSPB if there has been no final decision on the complaint or appeal, or 180 days after filing a petition to review with the EEOC if there has been no decision by the EEOC on the petition. **29 CFR 1614.310**

NOTE: County employees have no appeal rights to MSPB, only to EEOC.

6 Workplace Violence, Prevention & Response Program

Workplace Violence Prevention and Response (WVP&R) Program

Workplace violence is a critical, complex problem facing Federal agencies and the private sector. The risk of violence, harm to others and/or self, can arise internally from any level of the workforce or externally from customers, contractors, vendors and/or others. FFAS management, employees, unions, and employee associations, where applicable, can work to increase safety by recognizing and reporting acts or threats of violence, intimidation, harassment and other behavior that causes fear for personal safety and/or disruption in the workplace. The goals of FFAS are early recognition, reporting, assessing, and developing appropriate response plans, by the appropriate parties, to prevent or reduce and manage the risk of workplace violence.

Employee Awareness

The risk of workplace violence can be reduced through employee awareness of the following:

- What is violence?
- What are indicators of an increase possibility of violent behavior?
- What is a violence emergency that requires immediate assistance?
- What may appear to be a non-emergency that should be ignored?

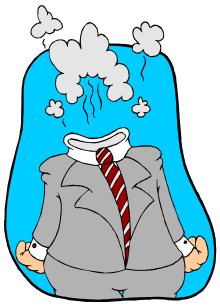
Recognizing Violence

Violence encompasses acts or threats of physical violence against persons or property. It also includes acts of intimidation, harassment, or other inappropriate behavior that causes fear for personal safety and/or disruption in the workplace. Recognizing that violence is a process, as well as an act, can reduce the risk of becoming a victim. Violence is often the culmination of long-developing and identifiable problems, conflicts and failure. The risk of violent behavior can increase when a set of conditions and factors are present. These include, but are not limited to, the following:

- The individual's behavior, personality, and thinking style
- Life stressors impacting the individual
- A triggering event or condition that leads the individual to see violence as an option or solution
- A setting that facilitates or permits the violence, or at least does not attempt to stop it from occurring.

6 Workplace Violence, Prevention & Response Program (Continued)

Recognizing Risk Factors



Risk factors are indicators that point to an increased possibility of violent behavior. A number of risk facts can be present without automatically indicating a potential for violence. To plan and implement an appropriate response, risk factors must be evaluated on their own merits, within the context and totality of a situation.

The FBI's National Center for the Analysis of Violent Crime has identified the following as indicators of increased risk:

- Intimidating, belligerent, harassing, bullying or other inappropriate and aggressive behavior
- Numerous conflicts with supervisors and other employees
- Bringing and/or brandishing a weapon in the workplace, making inappropriate references to guns and/or exhibiting a fascination with a weapon
- Making statements that show a fascination with incidents of workplace violence, that indicate approval of using violence to resolve a problem, or that indicate identification with perpetrators of workplace homicides
- Making statements that indicate desperation over family, financial or other personal problems to the point of contemplating suicide
- Engaging in drugs/alcohol
- Exhibiting extreme changes in behavior

NOTE: A list of risk factors compiled by FFAS may be accessed at http://dc.ffasintranet.usda/gov/hrd/risk_factors.htm.

6 Workplace Violence, Prevention & Response Program (Continued)

Preparing for an Emergency

Managers and supervisors are responsible for the following:

- Verifying which local law enforcement agency is responsible for responding to an emergency, for example, the sheriff's or police department, or the Federal Protective Service (FPS)
- Providing emergency contact telephone numbers to employees
- Ensuring that an emergency evacuation plan is in place
- Communicating the evacuation plan to all employees
- Conducting periodic drills.

Employees, in turn, are responsible for becoming familiar with the evacuation plan. However, the reality is that human behavior is unpredictable, and the dynamics of every violent situation are different. Depending on the circumstances, following an established evacuation plan may increase risk to safety. Instead, it may be necessary to find another way to escape to a safe area.

IMPORTANT: Offices are encouraged to hold discussions about the physical layout of the worksite and options for increasing safety, such as installing a duress alarm or implementing controlled access to the office.

In a situation with **angry or hostile customer or coworker**:

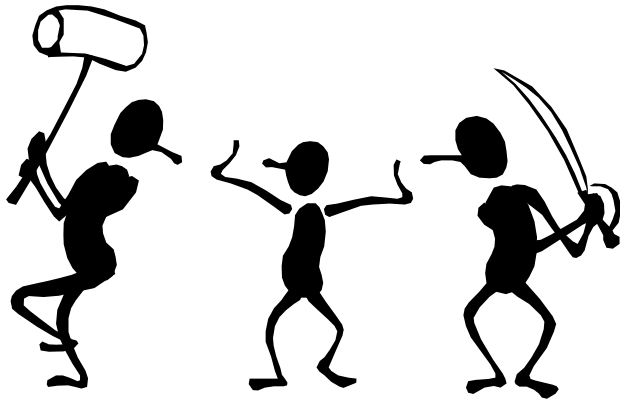
- Stay calm and listen attentively
- Maintain eye contact
- Be courteous and patient
- Keep the situation in your control

In a situation with a person **shouting, swearing and threatening:**

- Signal a coworker or supervisor that you need help (use a prearranged code word or duress alarm system)
- Do not make any calls yourself
- Have someone call local security or law enforcement personnel (FPS, or sheriff's or police department, depending on the jurisdiction).

6 Workplace Violence, Prevention & Response Program (Continued)

In a situation with someone threatening you with a gun, knife or other weapon:



- Stay calm and quietly signal for help (use a prearranged code word or duress alarm system)
- Maintain eye contact
- Stall for time
- Keep talking but follow instructions from the person who has the weapon
- Do not risk harm to yourself or others
- Never try to grab a weapon
- Watch for a safe chance to escape to a safe area.

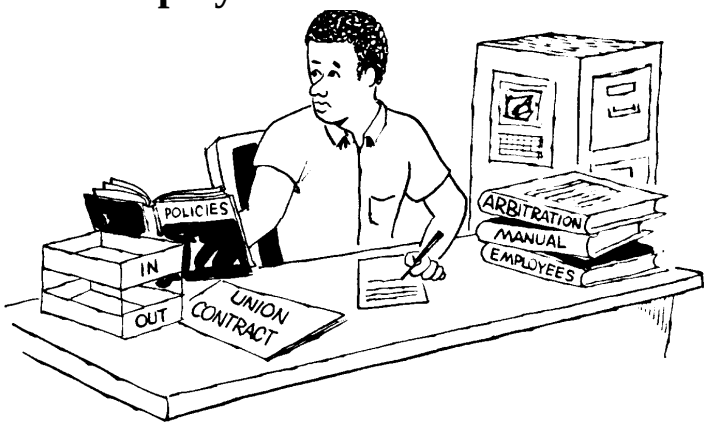
NOTE: The above guidance is provided by the Federal Protective Service.

Recognizing a non-emergency

In a non-emergency, employees may observe behavior that causes apprehension or fear for personal safety, but no immediate harm or risk to safety is apparent. It is best for employees to act on the side of safety and discuss their concerns with a supervisor or the contact of their choice.

7 Labor Relations Information:

A. Collective Bargaining Agreements (Descriptions) For Federal Employees



AREA	UNION	EFFECTIVE DATE	DESCRIPTION
ARKANSAS	AFGE Local 108 - CBA	November 5, 1991 Three-year duration	• Automatic renewal in one year intervals • All professional and non-professional FSA employees located in the State of Arkansas (statutory exclusions)
COLORADO	AFGE Local 3499 – CBA	May 14, 1981 Three-year duration	• Automatic renewal in three-year intervals • All permanent and temporary (expected to be employed over 90 days) non-professional FSA employees located in Colorado (statutory exclusions)
KANSAS	AFGE Local 3354 – CBA	January 1, 2003 Three-year duration	• Remains in effect until a new mutually-agreed upon agreement is ratified • All federal permanent and temporary (expected to be employed over 90 days) non-professional FSA employees located in Kansas (statutory exclusions)
KANSAS CITY, MISSOURI	NTEU Chapter 264 – CBA	December 1, 2002 Five-year duration	• Automatic renewal in one year intervals • Unit description-all professional and non-professional FSA employees located in KC metropolitan area (statutory exclusions)

7 Labor Relations Information (Continued):

A. Collective Bargaining Agreements (Descriptions) (Continued)

AREA	UNION	EFFECTIVE DATE	DESCRIPTION
KANSAS CITY, MISSOURI – RISK MANAGEMENT AGENCY	NFFE Local 858 – CBA	September 20, 1990 Three-year duration	• Automatic renewal in two-year intervals • All professional and non-professional General Schedule (GS) and Wage Grade (WG) employees in permanent full-time positions and permanent part-time positions and all temporary full-time and part-time employees (expected to be employed over 90 days) non-professional FSA employees located in the KC metropolitan area (statutory exclusions)
MISSISSIPPI	AFGE Local 1031 – CBA	September 2000	• Either party may reopen • All non-professional FSA employees located in the State of Mississippi (statutory exclusions)
MONTANA	AFGE Local 1585 – CBA	February 2006 Three-year duration	• Automatic renewal in one-year intervals • All professional and non-professional FSA employees located in the State of Montana (statutory exclusions)
NEW JERSEY	AFGE Local 2831 – CBA	June 15, 1987 Three-year duration	• Automatic renewal in one-year intervals • All professional and non-professional and temporary (employment is one year or more) FSA employees located in the State of New Jersey (statutory exclusions)
NEW MEXICO	AFGE Local 1019 – CBA	October 1, 1997	• Remains in effect until a new mutually-agreed upon agreement is ratified • All non-professional General Schedule (GS) and Wage Grade (WG) federal employees, employed by USDA, FSA, New Mexico

7 Labor Relations Information (Continued):

A. Collective Bargaining Agreements (Descriptions) (Continued)

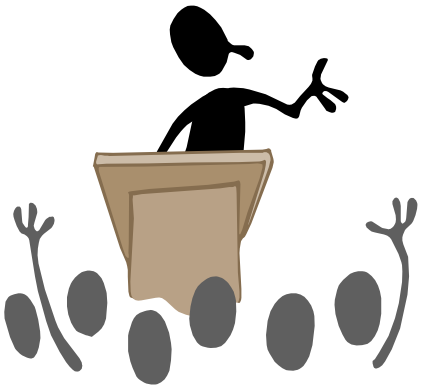
AREA	UNION	EFFECTIVE DATE	DESCRIPTION
NEW YORK	AFGE Local 2831 – CBA	July 15, 2003 Three-year duration	• Automatic renewal in one year intervals • All FSA employees located in the State of New York (statutory exclusions)
NORTH DAKOTA	AFGE Local 888 – CBA	April 19, 2000	• Duration will remain in effect until superseded by a term negotiated agreement or reopened by mutual agreement between the parties • All General Schedule federal employees of the USDA, FSA, North Dakota (statutory exclusions)
OKLAHOMA	AFGE Local 3354 – CBA	January 8, 2001 Three-year duration	• Automatic renewal in one year intervals • All professional and non-professional FSA employees located in the State of Oklahoma (statutory exclusions)
PUERTO RICO	AFGE Local 0055 – CBA	July 23, 1998 Three-year duration	• Automatic renewal in one year intervals • All non-professional FSA employees located in Puerto Rico (statutory exclusions)
ST. LOUIS, MISSOURI	AFGE Local 3354 – CBA	February 1, 1993 Five-year duration	• Automatic renewal in one year intervals • All permanent and temporary non-professional FSA employees located in St. Louis, Missouri (statutory exclusions)
TEXAS	AFGE Local 571 – CBA	Three-year duration	• Automatic renewal in one year intervals • All FSA employees located in Texas (statutory exclusions)
WASHINGTON, D.C.	AFSCME Local 3925 – CBA	November 23, 2002 Four-year duration	• Automatic renewal in increments of one year intervals • All FSA employees located in the Washington, D.C. metropolitan area (statutory exclusions)

7 Labor Relations Information (Continued):

A. Collective Bargaining Agreements (Descriptions) (Continued)

AREA	UNION	EFFECTIVE DATE	DESCRIPTION
WASHINGTON, D.C.	AFSCME Local 3976 – CBA	Mary 22, 1997 (Re-negotiated April 30, 1999) Three-year duration	• Automatic renewal in increments of one year intervals • All professional and non-professional employees employed by USDA, Foreign Agricultural Service (FAS) in the Washington, D.C. metropolitan area (statutory exclusions)
WASHINGTON, D.C.	AFSA/FAS – CBA	February 6, 2003 Four-year duration	• Automatic renewal in increments of one year intervals • All Foreign Service employees employed by FAS worldwide (statutory exclusions)

B. Negotiations (Questions and Answers) www.FLRA.gov



Q. What is the "duty to bargain?"

The duty to bargain concerns when and whether parties are obliged to negotiate under the Statute. Absent any limitations that the parties voluntarily place on when or how they will engage in negotiations, there are three basic situations that trigger the statutory duty to bargain: (1) term negotiations for a contract at the level of exclusive recognition; (2) midterm union initiated bargaining during the term of an agreement or union initiated bargaining after expiration of a contract; and (3) in response to a management change during the term of a contract or after a contract expires.

Q. What are term negotiations?

The Statute provides that parties to an exclusive bargaining relationship are required to negotiate a collective bargaining agreement upon request of either party at the level of exclusive recognition. These are term negotiations.

7 Labor Relations Information (Continued):

B. Negotiations (Questions and Answers) (Continued)

Q. What is union initiated midterm bargaining?

The Authority has adhered to the view of the D.C. Circuit that the duty to bargain in good faith imposed by the Statute requires an agency to bargain during the term of a collective bargaining agreement on negotiable union initiated proposals concerning matters that are not "covered by" the collective bargaining agreement, unless the union has waived its right to bargain.

Q. What is change bargaining?

Prior to implementing a change in a condition of employment of bargaining unit employees, an agency is required to provide the exclusive representative with notice and an opportunity to bargain over those aspects of the change that are within the scope of bargaining under the Statute. When an agency exercises a reserved management right and the substance of the decision is not itself subject to negotiation, the agency is nonetheless obligated to bargain over the procedures to implement that decision and appropriate arrangements for unit employees adversely affected by that decision, but only if the resulting changes have more than a de minimis effect on conditions of employment. Where an agency institutes a change in conditions of employment and the change is itself substantively negotiable, the agency must negotiate over the decision to make the change, rather than just procedures and appropriate arrangements.

Q. What is the duty to bargain in good faith?

The Statute requires the parties to bargain in good faith. This requires the parties to meet and negotiate for the purpose of arriving at a collective bargaining agreement. The parties have the mutual obligation to select authorized representatives who meet at reasonable times and bargain to reach agreement with respect to the conditions of employment affecting bargaining unit employees. If requested by either party, the parties are required to execute a written document incorporating any collective bargaining agreement reached. The parties must demonstrate a sincere resolve to reach a collective bargaining agreement.

Q. What is the "scope of bargaining?"

The scope of bargaining concerns what parties are required to negotiate under the Statute. Only matters that involve conditions of employment of bargaining unit employees are required to be bargained.

Q. What are "conditions of employment?"

Conditions of employment generally refer to those personnel policies, practices, and other matters, whether established by rule, regulation, or otherwise, which affect working conditions.

7 Labor Relations Information (Continued):

B. Negotiations (Questions and Answers) (Continued)

Q. Does the scope of bargaining depend on the size of the bargaining unit or the level of recognition within the agency?

Generally no. For example, the scope of bargaining for a new contract for a unit composed of 10 employees is identical to the scope of bargaining for a new contract covering 60,000 employees. Once the statutory duty to bargain is triggered, the scope of that bargaining remains a constant. Similarly, a level of management above the level of exclusive recognition may not lawfully limit the scope of bargaining at the level of exclusive recognition. Although higher levels of management may make management decisions binding on management at a lower level within the organization, higher level management may not lawfully remove matters from the bargaining table that are otherwise within the scope of bargaining merely by instructing the lower level that they have no discretion to bargain over certain matters.

Q. What is negotiability?

The concept of negotiability concerns whether a party is required to bargain over a particular matter. If a proposal is nonnegotiable, a party is not required by the Statute to engage in collective bargaining over that proposal. Thus, the concept of negotiability has little relationship to the merit of the proposal. If the matter is negotiable, it is within the scope of bargaining. Of course, as noted above, even negotiable matters are not required to be bargained unless there is a corresponding duty to bargain.

Q. How do Regional Offices become involved in negotiability disputes?

Often, issues relating to whether a proposal is negotiable arise in the context of an unfair labor practice charge alleging a unilateral change in a condition of employment without fulfilling the statutory duty to bargain. In those situations, the Regions work with the parties to reach either a substantive resolution of the dispute or an agreement to return to the bargaining table. In so doing, the Regions often are involved in assisting the parties in developing proposals that are negotiable under the Statute. However, if an agency implements a change in a condition of employment in the face of a negotiable proposal timely submitted by a union, the implementation is an unfair labor practice.

7 Labor Relations Information (Continued):

B. Negotiations (Questions and Answers) (Continued)

Q. Should a party submit bargaining proposals prior to filing an unfair labor practice charge or a negotiability appeal?

Yes. In the General Counsel's view, parties would be better served if the party seeking to negotiate formulates negotiable proposals to present to the other party rather than only filing an unfair labor practice charge or negotiability appeal. Only then will the other party be able to evaluate if the proposal is negotiable, rather than relying on a general position that a topic is nonnegotiable. For example, it is possible that the agency never intended to refuse to bargain over any particular proposal but merely set forth its view that the decision which triggered the request to bargain was the exercise of a management right. Similarly, to obtain a negotiability determination by the Authority, a union needs to present an actual proposal to the agency.

Q. Is it important to know the rules of negotiability to bargain successfully in the Federal sector?

Yes. Although many parties bargain by utilizing "pre-decisional involvement" and interest-based methods, most parties at some occasion find themselves drafting proposals and dealing with the legal doctrine of negotiability. The parties need to understand these legal rules in order to obtain the maximum benefit from the scope of bargaining under the Statute.

Q. What is a "permissive" subject of bargaining?

A permissive subject of bargaining is a matter outside the scope of bargaining. Bargaining is not required, but it is not prohibited. Examples of permissive subjects of bargaining are proposals that directly implicate supervisors' conditions of employment and matters that place limitations on the exercise of a statutory right.

Q. Are parties allowed to bargain over matters which are not conditions of employment?

Yes. Parties are fully empowered to bargain over, and to choose to agree to, a contract proposal that does not concern a condition of employment, such as procedures for applying for supervisory positions or competitive areas, because such proposals address permissive subjects of bargaining. Once an agency and a union agree to such a proposal, it is enforceable provided that it is otherwise consistent with the Statute. Once such matters are included in a collective bargaining agreement, the provisions are not subject to section 7114(c) agency head disapproval simply because they do not involve a condition of employment. Although bargaining is not required and a party cannot insist to impasse on such matters, bargaining is not prohibited.

7 Labor Relations Information (Continued):

B. Negotiations (Questions and Answers) (Continued)

Q. Are parties allowed to bargain over limitations on their statutory rights?

Yes. Parties are not required to negotiate limits or conditions on the exercise of their statutory rights, but they are not precluded from doing so if they deem it in their best interest. It is not unlawful for either party in collective bargaining to make proposals which limit or condition the exercise of statutory rights. For example, there is no duty to bargain below the level of exclusive recognition, but the parties may choose to bargain over certain matters at local levels. Again, once an agency and a union agree to such a permissive proposal, it is enforceable provided that it is otherwise consistent with the Statute.

Q. Is bargaining precluded over a matter just because a matter is addressed in a law or government-wide regulation?

No. The Statute does not totally preclude bargaining over matters addressed in law or government-wide regulation. Rather, as long as a proposal does not conflict with the law or government-wide regulation, and the law or government-wide regulation does not divest the agency of discretion over the matter addressed in the proposal, the matter may be subject to negotiations.

Q. What are management rights?

The management rights clause in the Statute, section 7106(a)(1) and (2), sets forth those matters which are outside the scope of bargaining. These subjects are commonly referred to as prohibited subjects of bargaining.

Q. What are elective subjects of bargaining?

Elective subjects of bargaining, also referred to as permissive, are set forth in section 7106(b)(1) of the Statute. Parties may, but are not required to, bargain over section 7106(b)(1) matters. Should an agency and union agree upon a section 7106(b)(1) subject, similar to a matter that is not a condition of employment, that contract clause may not be disapproved under section 7114(c) agency head review and is enforceable in arbitration.

7 Labor Relations Information (Continued):

B. Negotiations (Questions and Answers) (Continued)

Q. What is an appropriate arrangement?

Appropriate arrangements are exceptions to management's exercise of its reserved rights. A proposal that directly affects a section 7106(a) or (b)(1) management right may nonetheless be negotiable if it qualifies as an appropriate arrangement. The exercise of management rights are "[s]ubject to subsection (b)" of section 7106. Proposals that qualify as procedures and appropriate arrangements under section 7106(b)(2) and (3) of the Statute are within the scope of bargaining, even though they may limit some of management's discretion in exercising its section 7106 rights. Similarly, the management rights set forth in section 7106(b)(1) of the Statute are outside the mandatory scope of bargaining, although management may elect to bargain over these elective subjects. Again, even if management elects not to bargain section 7106(b)(1) rights, appropriate arrangements and procedures concerning those elective rights are within the scope of bargaining.

Q. Should a party understand the legal tests for determining whether a proposal is an appropriate arrangement before drafting such a proposal?

Yes. Many disputes over whether a proposal is negotiable or not center initially around whether the proposal interferes with a management right (section 7106(a) or (b)(1)), and if it does, whether the proposal constitutes an appropriate arrangement. In the General Counsel's view, parties may not be gaining the entire benefits of the Statute if they do not focus on creating appropriate arrangement proposals.

Q. When must parties bargain over appropriate arrangements?

Prior to bargaining over negotiable proposals there must be a statutory duty to bargain. Once there is such a duty to bargain, however, the scope of that bargaining remains constant. Thus, during term negotiations, all proposals within the scope of bargaining under the Statute are bargainable. Similarly, during union initiated bargaining during the term or after the expiration of a contract, proposals that are within the Statute's scope of bargaining are subject to bargaining, absent other contractual constraints. When management makes a change in a condition of employment, the duty to bargain over appropriate arrangements is triggered if the change has more than a de minimis impact on employees' working conditions. This test triggers the duty to bargain and does not determine whether a particular proposal is within the scope of bargaining under the Statute.

7 Labor Relations Information (Continued):

B. Negotiations (Questions and Answers) (Continued)

Q. What is the legal test for an appropriate arrangement?

In determining whether a proposal is within the duty to bargain under section 7106(b)(3), the Authority initially determines whether the proposal is intended to be an arrangement for employees adversely affected by the exercise of a management right. An arrangement must seek to mitigate adverse effects flowing from the exercise of a protected management right. Further, the claimed arrangement must also be sufficiently tailored to compensate or benefit employees suffering adverse effects attributable to the exercise of a management's right. If the proposal is an arrangement, the Authority then determines whether it is appropriate, or whether it is inappropriate because it excessively interferes with a management right. In doing so, the Authority weighs the benefits afforded to employees under the arrangement against the intrusion on the exercise of management's right.

Q. How can parties develop negotiable appropriate arrangement proposals?

Proper attention in developing proposals in response to the exercise of a management right and during the course of bargaining by both parties allows the parties to develop meaningful negotiable proposals and affords the parties the opportunity to actually bargain over the issue instead of arguing over what they will bargain about. The concept of negotiability only means that there is bargaining over the proposal, not that either party must agree to the proposal. Unfortunately, a few parties spend more time and effort arguing over whether they should be bargaining rather than actually bargaining over the matter at issue. To assist the Regions when working with parties to avoid negotiability disputes and to concentrate their efforts on effectuating collective bargaining rather than arguing over whether there should be bargaining, the Guidance presents and develops the following process:

- (a) identify the management right being exercised;
- (b) identify the adverse affect;
- (c) identify the adversely affected employees; and
- (d) develop meaningful proposals that are appropriate.

7 Labor Relations Information (Continued):

B. Negotiations (Questions and Answers) (Continued)

Q. When will the repudiation of a contract clause concerning a section 7106(a) management right be an unfair labor practice?

Disputes over the interpretation and application of an existing contract clause sometimes lead an agency to repudiate that clause based on its belief that the clause affects a section 7106(a) management right. In these circumstances, if the contact clause was an arrangement when negotiated, the Authority will enforce that clause unless it "abrogates" a section 7106(a) management right. Under this legal analysis, even though the clause may have been nonnegotiable at the time of bargaining, i.e., although an arrangement, the clause excessively interfered with a management right, once it has been negotiated into a contract that has survived section 7114(c) agency head review, the applicable legal test changes from excessive interference to abrogation.

Q. What are section 7106(b)(2) procedures?

Procedures which management officials of the agency observe in exercising any authority under section 7106(a)(1), (a)(2) and (b)(1) are negotiable. However, unlike appropriate arrangements, the Authority has held that proposals on procedures cannot "directly interfere" with a management right. The current legal test for identifying procedures has been questioned. This presents an opportunity for a party to develop a test case to present to the Authority to obtain an understanding of the meaning of procedures under section 7106(b)(2) of the Statute.

Q. How can parties avoid negotiability disputes?

Proper utilization of a pre-decisional process and the use of an interest-based problem-solving approach to statutory collective bargaining could avoid negotiability disputes. The Guidance offers other suggestions on how the parties may further discuss the dispute in an attempt to return to the process of collective bargaining:

- (a) draft proposals clearly and plainly;
- (b) do not confuse the concept of negotiability with the merits of the proposal;
- (c) unions should curtail bargaining based on a dispute over negotiability only as a last resort;
- (d) determine whether the agency believes the entire proposal or just a portion or phrase of the proposal is nonnegotiable;
- (e) explore why the agency believes the proposal is nonnegotiable;
- (f) discuss the purpose of the proposal; and
- (g) ensure there is agreement on the meaning of the proposal and an understanding why the agency believes the proposal to be nonnegotiable before exploring litigation alternatives.

7 Labor Relations Information (Continued):

C. Formal Discussions and Representational Rights (Questions and Answers) www.FLRA.gov

Q. What is the purpose of the formal discussion right?

The Statute grants a union the right to be represented at a formal discussion in order to represent the institutional interests of the exclusive representative. The intent is that the union's presence and participation will enable the meeting to be successful and productive by, for example, asking questions to clarifying the matters being discussed and avoiding misunderstandings.

Q. What are the elements of a formal discussion?

In order for the section 7114(a)(2)(A) formal discussion right to exist, there must be: (1) a discussion; (2) which is formal in nature; (3) between at least one or more agency representatives and one or more unit employees or their representatives; (4) concerning any grievance or personnel policy or practices or other general condition of employment.

Q. Does there have to be an actual dialogue or debate between agency officials and employees for a discussion to occur?

No. A meeting is synonymous with a discussion so a meeting for the sole purpose of making a statement or announcement, rather than to engender dialogue, is a formal discussion.

Q. What makes a discussion formal?

The Authority examines the purpose and nature of a discussion, as well as the manner in which the meeting was arranged and conducted to determine whether a discussion is formal in nature. Formality is distinguished from impromptu, on the job discussions, and discussions involving one employee and a supervisor about such matters as performance.

Q. What are some of the factors the Authority examines to decide formality?

Some of the factors the Authority examines are: (1) the status of the individual who held the discussion; (2) whether any other management representatives attended; (3) the site of the discussions; (4) how the meetings for the discussions were called; (5) how long the discussions lasted; (6) whether a formal agenda was established for the discussions; and (7) the manner in which the discussions were conducted.

7 Labor Relations Information (Continued):

C. Formal Discussions and Representational Rights (Questions and Answers) (Continued)

Q. Who must participate for there to be a formal discussion?

A representative of the agency must participate in a meeting with unit employees to trigger a union representational right

Q. What has to be the subject matter to be a formal discussion?

To be a formal discussion, the meeting must concern either "any personnel policy or practices or other general condition of employment" or a "grievance."

Q. What is "any personnel policy or practices or other general condition of employment"?

"Any personnel policy or practices" are general rules applicable to agency personnel. A "general condition of employment" concerns conditions of employment affecting unit employees generally.

Q. What is a "grievance" for purposes of formal discussions?

The term "grievance" for formal discussion purposes is defined in the section 7103(a)(9) broad statutory definition. Thus, the initial, informal stages of a grievance procedure and statutory appeals have been found to be grievances for formal discussion purposes.

Q. Does an actual grievance have to be filed?

No. To be considered a "grievance" for purposes of a formal discussion, the matter does not have to be subject to the negotiated grievance procedure.

Q. Can a meeting in progress change into a formal discussion?

Yes. A meeting that does not begin as a formal discussion, may nonetheless develop into or become a formal discussion once all of the elements have been met.

Q. Is a potential grievance sufficient to trigger the formal discussion right?

There are differing views. One view is that a potential grievance is sufficient to trigger the formal discussion right. The other is that to be a grievance for formal discussion purposes, there is a need to be either a meeting that takes place where a final decision has been made by the agency, a statutory procedure has been invoked, or an informal or formal negotiated grievance has been filed.

7 Labor Relations Information (Continued):

C. Formal Discussions and Representational Rights (Questions and Answers) (Continued)

Q. What type of notice of the meeting has to be given by the agency to the union?

The Statute requires prior notification so that the union has the opportunity to choose its own representative. Thus, "actual representation" at the meeting is not sufficient if the union did not have sufficient notice to choose its own representative. However, where a union official receives "actual notice" of a meeting, but does not receive "formal notice" as a union representative, the Authority determines whether that receipt was sufficient to establish that the union had an opportunity to designate a representative of its own choosing and to be represented.

Q. To what extent can a union representative participate at the meeting?

The right to be represented encompasses the opportunity to speak, comment and make statements, although it does not extend to taking charge of, usurping or disrupting the meeting.

Q. What is the remedy for a formal discussion unfair labor practice?

In addition to a traditional cease and desist order and a remedial posting, the Authority affirmatively orders the agency to provide prior notice to the union and the opportunity to be represented at any formal discussions. A nontraditional remedy for a formal discussion violation is to re-hold the meeting to enable the union to ask questions and make comments as if it had been given notice of the meeting and an opportunity to actively participate, as required by the Statute or to convene a meeting among the unit employees who attended the formal discussion on duty time at the same location and for the same time period to allow the union to respond to the discussion at the meeting and answer employee questions about the subject matter.

Q. What are the roles of the parties at a formal discussion?

An agency representative's role is to conduct the meeting and accomplish its purpose, whether it is to merely impart information to employees, give guidance or instructions, or obtain employee feedback on work- related issues. The union's role is to actively participate on behalf of the unit employees and present, as appropriate, its institutional perspective.

7 Labor Relations Information (Continued):

C. Formal Discussions and Representational Rights (Questions and Answers) (Continued)

Q. What are some strategies to avoid formal discussion conflict?

These are some suggested strategies to implement the formal discussion right without creating conflict:

a. The union designates certain officials to receive notice of formal discussions.
b. Should a union learn of a scheduled formal discussion, whether or not the union believes the notice was proper, the union should inquire of the agency, rather than not attend and claim lack of notice.
c. The parties can engage in a constructive dialogue in an attempt to accommodate their respective interests when the union claims that the representative of choice is unavailable for the scheduled date of the meeting.
d. Agencies share with their union counterpart information that will enable the union to be an effective participant at the meeting to ensure a successful meeting.
e. The parties jointly decide how they will implement the formal discussion right, such as developing a protocol so that disputes about the degree, timing and character of the union's participation does not become an issue for disagreement, conflict and litigation, overshadowing the importance of the subject matter of the meeting.
f. An agency during the meeting makes it clear that it is aware of its responsibilities under the Statute and contract and intends to fulfill those obligations with respect to the subject matter.
g. The parties agree to a useful pre-arrangement regarding notice, sharing information and participation at routinely scheduled formal discussion meetings.
h. The parties agree upon a protocol to identify factors to guide them on how notice is given and meetings are scheduled.

Q. What constitutes a bypass of the exclusive representative?

In certain situations, an agency must deal only with the union that exclusively represents the bargaining unit employees. The agency may not deal with the employees directly, even if the agency offers the union an opportunity to be present and to actively participate. Rather, the union can insist that the agency only deal with it. The failure of an agency to deal only with the union under these circumstances is a bypass and an unfair labor practice.

7 Labor Relations Information (Continued):

C. Formal Discussions and Representational Rights (Questions and Answers) (Continued)

Q. What are some examples of when the agency must deal only with the union?

One example is a meeting over a grievance under the parties' negotiated grievance procedure. Another is when an agency deals with employees over matters, such as a new parking policy, that should be bargained with the union or when an agency is bargaining with a union but then starts to deal with the employees over the same matter.

Q. What are some strategies to avoid bypass situations?

It is sometimes difficult for parties to distinguish an agency's unlawful bypass of an exclusive representative from a lawful agency communication or a meeting with unit employees. One strategy is simply to refrain from meeting alone with any employee involved in a grievance filed under the negotiated agreement. Also, an agency should keep the union informed of its intentions to communicate with unit employees over conditions of employment. Many times, a bypass allegation accompanies situations where a union is not given the opportunity to be present at a formal discussion.

Q. What is the right to representation in a grievance filed under the negotiated grievance procedure?

When a union files a grievance on behalf of an employee, the agency is required to deal only with the union over all matters pertaining to that grievance. Any dealing with the employee in the absence of the union would be a bypass of the union, as well as a formal discussion violation. If an employee elects to file a grievance on his/her own behalf, the union would not be the representative of the employee for purposes of the grievance, but still must be afforded the opportunity to be present during the processing of the grievance.

Q. What are some strategies to avoid disputes over representation at grievances?

An agency should avoid meeting alone with any grievant who has filed a grievance under the negotiated grievance procedure, whether the grievance was filed by the union on behalf of the employee, or whether the employee filed the grievance and elected to represent him/herself or have the union as a representative. Similarly, once an agency has recognized the union as a representative in a dispute between a unit employee and the agency, the agency should not deal alone with the employee.

7 Labor Relations Information (Continued):

C. Formal Discussions and Representational Rights (Questions and Answers) (Continued)

Q. How is a right to representation created by contract?

Parties may negotiate the right to representation into their contract. The parties are free to identify those situations and conditions where union representation is appropriate. As a contract right and not a statutory right, any dispute over the implementation or breach of the right constitutes a grievance and not an unfair labor practice, unless the breach qualifies as a repudiation.

Q. How else can contracts concern the right to representation?

The parties may also define in their contract how they will exercise and implement their statutory rights, such as the manner in which notice will be given for formal discussions. As with contract rights establishing a right to representation, any dispute over whether a party has complied with a particular contract provision concerning how a statutory right would be exercised would be a grievance and not an unfair labor practice, unless it is a repudiation. However, if a party charges that the other has not complied with a statutory right (rather than the particular contract provision), the contract provision that limits or defines the implementation of that statutory right may be a defense to the unfair labor practice allegation.

Q. How is a right to representation created by practice?

Parties also may create a right to representation through a practice. Under these circumstances, that representational practice may not be modified by either party without fulfilling the statutory bargaining obligation, as is required before any other established condition of employment may be changed.

Q. What are some strategies to avoid disputes over representation rights created by contract and past practices?

Any contract rights to representation should be as clear as possible, with a joint bargaining history and examples to guide the employees, union officials, and managers. Similarly, contract language implementing a statutory right or which place some sort of limitation on existing statutory rights should be equally clear. The parties should understand that they are creating contractual rights and obligations and that, absent a repudiation, any unresolved dispute is a grievance and not an unfair labor practice.

7 Labor Relations Information (Continued):

D. Weingarten Rights (Questions and Answers)

Q. What are Weingarten Rights?

Section 7114(a) (2) (B) states: (2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at (B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and (ii) the employee requests representation.

Q. What elements must be present to be subject to Weingarten Rights?

The following four elements must be present:

1) An examination of an employee in connection with an investigation. To be an investigatory examination, the meeting must involve the questioning of an employee as part of an inquiry to ascertain facts.

2) The examination is conducted by an agency representative. An agency representative includes supervisors, managers, personnel specialists, internal agency auditors and inspectors general.

3) The employee reasonably believes disciplinary action against him or her may result.

4) The employee requests representation. The union's entitlement to be present occurs only at the employee's request. If the employee does not request union representation, management may hold the meeting without notifying the union.

   The exception to this would be if the negotiated contract required management to notify the union regardless if the employee has made a request.

Q. What can a union representative do at a Weingarten meeting?

1) The union representative may consult with the employee prior to the start of the meeting in order to get a general understanding of the circumstances and consult with the employee during the meeting.

2) The union representative may object to questions asked by the supervisor, suggest alternative or add additional questions, suggest others who have knowledge of the facts.

3) Review with the employee any documents that the management representative shows to the employee.

7 Labor Relations Information (Continued):

D. Weingarten Rights (Questions and Answers) (Continued)

Q. What can't the union representative do at a Weingarten meeting?

1) Answer the questions for the employee.

2) Prohibit the supervisor from asking questions or requiring the supervisor to ask any question.

3) Unduly delay or disrupt the meeting by conferring with the employee about every question.

4) Require the supervisor to hand over documents or other information about the incident.

If a supervisor involved in an investigative meeting is unsure about the behavior of the union representative, he or she may end the meeting to get advice from the Employee and Labor Relations Specialist.

7 Labor Relations Information (Continued):

E. Union Information Requests www.FLRA.gov

In IRS, KC, the Authority set forth its new analytical approach to determine whether information is "necessary" under section 7114(b)(4) of the Statute. The Authority adopted the "particularized need" standard for determining the necessity of all requested information, concluding that it will apply the same approach in deciding whether information is necessary, regardless of the type of documents requested.

In defining the term "particularized need", however, the Authority did not require the "heightened level of 'need' for disclosure of intramanagement guidance that a union must establish to outweigh the countervailing agency interests" identified by the D.C. Circuit in National Labor Relations Board v. FLRA, 952 F. 2d 523 (D.C. Cir. 1992) (NLRB v. FLRA). Rather, the Authority noted that the D.C. Circuit had used the phrase "particularized need" in varying contexts, causing "confusion." The term "particularized need" was originally introduced by the D.C. Circuit when analyzing requests for intra management guidance in NLRB v. FLRA, but later was applied by the court regardless of the type of documents or countervailing interests at issue. When the Authority adopted the NLRB v. FLRA approach in National Park Service, National Capital Region, United States Park Police, 48 FLRA No. 127, 48 FLRA 1151 (1993), "the Authority did not address this apparent distinction." IRS, KC, at p.667. The Authority has now clarified the matter by deciding to use the term "particularized need" consistent with its use by the D.C. Circuit in later decisions, such as United States Department of Veterans Affairs, Washington, D.C. v. FLRA, 1 F.3d 19 (D.C. Cir. 1993) and United States Department of Justice, Bureau of Prisons, Allenwood Prison Camp, Montgomery, Pennsylvania v. FLRA, 988 F. 2d 1267 (D.C. Cir. 1993).

Under this interpretation, a union requesting information under section 7114(b)(4) of the Statute must establish a particularized need for requested information "by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the Statute." IRS, KC, at p. 669. The Authority noted that this requirement "will not be satisfied merely by showing that requested information is or would be relevant or useful to a union." "Instead, a union must establish that requested information is 'required in order for the union adequately to represent its members.'" IRS, KC, at p. 669-670.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

In addition to satisfying the particularized need standard in order to trigger the statutory duty to furnish the requested information, the union request must contain sufficient particularity to allow an agency to make a decision upon the request. The Authority now requires that "[t]he union is responsible for articulating and explaining its interests in disclosure of the information. Satisfying this burden requires more than a conclusory or bare assertion. Among other things, a request for information must be sufficient to permit an agency to make a reasoned judgment as to whether the information must be disclosed under the Statute." IRS, KC, at p. 669-670. As to specificity, the Authority will not require the request to "be so specific as, for example, to require a union to reveal its strategies or compromise the identity of potential grievants who wish anonymity." "Moreover, the degree of specificity required of a union must take into account the fact that, in many cases, ... a union may not be aware of the contents of a requested document." IRS, KC, at p. 669-670.

With respect to an agency's defense to furnishing information, the Authority found that there is no presumptive anti-disclosure interests in non-intramanagement guidance information. Rather, "[a]n agency denying a request for information under section 7114(b)(4) must assert and establish any countervailing anti-disclosure interests." "Like a union, an agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying 'no'." IRS, KC, at p. 669-670.

Where parties are unable to agree on whether or to what extent requested information must be provided, the Authority stated that an unfair labor practice will be found if a union has established a particularized need for the requested information as discussed above and either: (1) the agency has not established a countervailing interest; or (2) the agency's established countervailing interest does not outweigh the union's demonstration of particularized need. Of course, the requesting union must also establish that the other elements in section 7114(b)(4) have been met.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

Particularized Need Standard

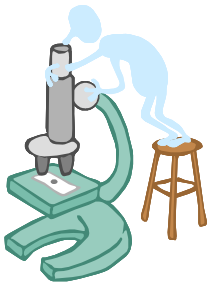
To establish a particularized need for requested information, the union must establish that the requested information is actually required for the union to fulfill its representational responsibilities as the exclusive representative. The assertions of need advanced by the union must demonstrate that the information requested is required for the union to adequately represent unit employees. Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, Dallas, Texas, 51 FLRA No. 49 (1995). This requires the Regions when investigating a refusal to furnish requested information to discover with specificity:

1. Exactly why did the union need the requested information;

2. What would the union have used the requested information for if it had been furnished; and

3. How would that use of the information relate to the union's role as the exclusive representative.

Absent discovery of evidence that establishes that the requested information was required in order for the union to adequately represent its members; i.e., absent the establishment of a particularized need, the unfair labor practice charge should be dismissed, absent withdrawal, consistent with the Office of the General Counsel Quality of Unfair Labor Practice Investigations Policy and Scope of Investigations Policy.



7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

Sufficiency of Union Request for Information

Even if a charging party labor organization presents evidence of a particularized need for information not furnished, the Region must still ascertain whether the union's request for that information was sufficient so as to trigger an agency's statutory duty to furnish data.

A valid request requires that the union must articulate and explain to the agency its interests in the disclosure of the information. This requires the Regions when investigating a refusal to furnish requested information to discover with specificity:

1. Was the request specific enough to permit the agency to make a reasoned judgment as to whether the information must be disclosed under the Statute;

2. Did the Union articulate and explain its interests in disclosure of the information; and

3. Did the union respond properly to any agency requests for further clarification as to why the union needed the information; the purpose for which the union would use the information; and how that use relates to the union's representation of the unit employees, without revealing the union's strategies or compromising the identity of a potential grievant who wishes anonymity

The Regions should investigate whether requests for information meet this test, just as the Regions in unilateral change cases investigate requests to bargain and in investigatory examination cases investigate requests for representation. A request may be oral, as well as written, or a combination of oral and written communications.. The Authority will not consider reasons supporting a request which are advanced for the first time by the General Counsel after issuance of a complaint rather than by the union in its request to the agency. U.S. Department of Veterans Affairs, Regional Office, St. Petersburg, Florida, 51 FLRA 47 (1995). Thus, a valid request is an essential element of any violation of section 7114(b)(4) of the Statute. Absent a finding by the Region that the request was sufficient so as to permit the agency to make such a reasoned judgment, the unfair labor practice charge should be dismissed, absent withdrawal, consistent with the Office of the General Counsel Quality of Unfair Labor Practice Investigations Policy and Scope of Investigations Policy.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

Agency Anti-Disclosure Interests

If a requesting union has established a particularized need based on a sufficient request for information under section 7114(b)(4), an agency may establish a countervailing interest in the disclosure of that information. When investigating a refusal to furnish information based on an agency's assertion of a countervailing anti-disclosure interest, the Region must ascertain:

1. Whether the agency informed the union in response to the request that it was asserting a countervailing anti-disclosure interest; and

2. Whether the agency has established such an anti-disclosure interest.

Personal Identifiers

Part 2 of this memorandum discusses, among other things, whether the release of personal identifiers (such as names, social security numbers or other information identifying a particular employee) renders the disclosure of that information contrary to the Privacy Act. However, in addition to Privacy Act restrictions on releasing personal identifiers, the Authority rarely finds any particularized need for the release of personal identifiers under section 7114(b)(4)(B) of the Statute.

In U.S. Department of Labor, Washington, D.C., 51 FLRA No. 41 (1995) (DOL), the Authority found that the union did not satisfy its burden of demonstrating that the requested information was required to adequately represent its members. The Authority held that the union had not established with the requisite specificity a need for the requested records. In addition, the Authority specifically stated that the union did not identify why it needed the name-identified documents.

It appears that the Authority will require the same degree of specificity when personal identifiers are requested; i.e., why the union needs the names or personal identifiers, the specific uses to which the union will put the personal identifiers and the connection between those uses and the union's representational responsibilities - as it requires when substantive information in documents is requested. Thus, when investigating unfair labor practice charges which concern a request for personal identifiers in documents, the Regions should apply the same particularized need analysis independently to the personal identifiers as it applies to the substance in the requested documents. For example, it is possible that the Authority could find a particularized need for the contents of documents but could find no particularized need for the same documents with personal identifiers. Similarly, the Authority requires that a particularized need be established for the time period covered by the requested documents. For example, there may be

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

a particularized need for certain documents for a certain time period (such as one year) but no particularized need for those same types of documents for a greater time period (such as five years, as in DOL).

Also in DOL, the Authority held that an Administrative Law Judge cannot order the release of sanitized documents if the union requested only unsanitized documents and the complaint only alleged the refusal to provide unsanitized documents. An agency must have the opportunity to fully and fairly litigate the issue whether sanitized information should have been furnished.

Thus, when drafting information complaints, the Regions should ensure that all information complaints specifically plead whether the alleged violation is the failure to furnish sanitized or unsanitized documents. If the complaint alleges only unsanitized, consistent with DOL, the Region should not argue in the alternative the failure to furnish sanitized documents. If the union requested either sanitized or unsanitized and the agency refused both requests, the complaint should separately allege both refusals. Note, however, that a prerequisite to pleading a failure to furnish both unsanitized and sanitized documents is a sufficient union request for both types of documents.

Regional Office Decision Making Process

When an unfair labor practice charge is filed alleging a violation of section 7114(b)(4), the necessity of the requested information is in dispute and the parties are unable with the Region's assistance to agree on whether or to what extent requested information must be provided, the Region should follow the following decisional process:

Insufficient request or particularized need not established - If the investigation does not establish both a sufficient union request and a particularized need for the information, in addition to the other elements of section 7114(b)(4), the Region should dismiss the unfair labor practice charge, absent withdrawal, consistent with the Office of the General Counsel Quality of Unfair Labor Practice Investigations Policy and Scope of Investigations Policy.

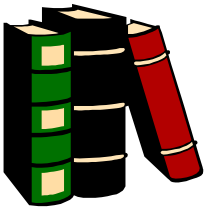
No countervailing anti-disclosure interest - If a union has made a sufficient request and has established a particularized need, and the other elements in section 7114(b)(4) have been met, and if there is no assertion and establishment of countervailing anti-disclosure interests, absent settlement, complaint should issue consistent with the Office of the General Counsel Settlement Policy.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

Particularized need and countervailing anti-disclosure interests both established - If a sufficient request, a particularized need, and the other elements in section 7114(b)(4) are established, as well as countervailing interests, the Region should balance the needs and interests of the parties and determine whether the union's needs for the information outweigh the agency's interests against disclosure. In IRS, KC, the Authority also stated that it "expects the parties to consider, as we will in determining whether and/or how disclosure is required, alternative forms or means of disclosure that may satisfy both a union's information needs and an agency's interests in information." IRS, KC, at p. 671. Thus, in my view, a union's good faith and reasonable attempt to accommodate an agency's anti-disclosure interest and an agency's good faith and reasonable attempt to accommodate a union's need for information are factors which must be considered in determining whether a complaint, absent settlement, will issue alleging a violation of section 7114(b)(4) of the Statute. For example, an agency's reasonable offer of accommodation, rejected by a union, may constitute a valid response to an information request, resulting in dismissal of a charge, if the Region is unable to assist the parties in resolving their information dispute as discussed in Part 3 of this memorandum. Similarly, a union's reasonable offer to accept sanitized information, rejected by an agency, may result in issuance of an unfair labor practice complaint if the Region is unable to assist the parties in resolving their information dispute.

Agency failure to articulate its reasons for nondisclosure to the union - In situations where the Region finds a sufficient request and a particularized need for requested information, as well as satisfaction of the other elements in section 7114(b)(4), and the agency has refused to articulate to the union its reasons for nondisclosure or has refused to discuss with the union alternative methods to meet both its own and the union's interests, any complaint which issues alleging the failure to provide the information should also allege an independent bad faith bargaining unfair labor practice in violation of section 7116(a)(5) of the Statute. Similarly, even if the Region determines that there is no statutory requirement to furnish requested information, an agency refusal to articulate to the union its reasons for nondisclosure or a refusal to discuss with the union alternative methods to meet both its own and the union's interests should be alleged to be an independent bad faith bargaining unfair labor practice in violation of section 7116(a)(5) of the Statute. As a remedy the Region should seek an order requiring the agency to engage in such communication for future requests, but should not require disclosure of the information.



7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

PART 2 - THE PRIVACY ACT

SECTION 1 - THE RULE ESTABLISHED IN FAA, Westbury.

FOIA Exemption 6

In FAA, the Authority set forth the analytical approach to assess an agency's claims that disclosure of information requested under section 7114(b)(4) of the Statute would constitute a clearly unwarranted invasion of personal privacy within the meaning of FOIA Exemption 6 and, therefore, is prohibited from disclosure by the Privacy Act.[(2)] The Authority concluded that an agency asserting that the Privacy Act bars disclosure is required to demonstrate: (1) that the information sought is contained in a "system of records" within the meaning of the Privacy Act; (2) that disclosure would implicate employee privacy interests; and (3) the nature and significance of those privacy interests. If an agency in an unfair labor practice proceeding makes the requisite showings, the Authority found that the burden then shifts to the General Counsel to: (1) identify a public interest cognizable under the FOIA; and (2) demonstrate how disclosure will serve that public interest.

The Authority explained that the only relevant public interest to be considered under the FOIA is the extent to which the requested disclosure would shed light on the agency's performance of its statutory duties, or otherwise inform citizens concerning the activities of the Government. In particular, the Authority held that the public interest in collective bargaining that is embodied in the Statute, or specific to a union in fulfilling its obligations under the Statute, will no longer be considered in analyzing the application of Exemption 6 of the FOIA.

If both the public interest cognizable under the FOIA and privacy interests are established, the Authority will balance the privacy interests of employees against the public interest in disclosure. If the balance leads to the conclusion that the privacy interests are greater than the public interest at stake, the requested disclosure would constitute a clearly unwarranted invasion of personal privacy under FOIA Exemption 6 and, therefore, that disclosure would be prohibited by law (the Privacy Act) under section 7114(b)(4) of the Statute. Accordingly, the agency would not be required to furnish the information, unless disclosure was permitted under another exception to the Privacy Act. If the public interest in disclosure is greater than the privacy interests that disclosure would be required under the FOIA (since it does not fall within FOIA Exemption 6). Since disclosure under the FOIA is an exception to the Privacy Act, disclosure of the information would not be prohibited by the Privacy Act.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

Routine Use

In U.S. Department of Transportation, Federal Aviation Administration, Little Rock, Arkansas, 51 FLRA No. 24 (1995) (FAA, Little Rock), the Authority addressed the routine use in the OPM/GOVT-2 system of records. This system of records covers most personnel related matters. OPM's routine use statement governing that system of records, identified as routine use "e," provides that records may be disclosed "to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation." 57 Fed. Reg. 35710 (1992). Accordingly, when requested information is contained in OPM/GOVT-2, it must be determined whether the requested information is "relevant and necessary" within the meaning of routine use "e."

The Authority had previously in National Treasury Employees Union and U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C., 46 FLRA No. 22, 46 FLRA 234, 243 (1992), adopted and applied OPM's interpretation of the routine use contained in FPM Letter 711-164 (September 17, 1992). In FAA, Little Rock, the Authority stated that it would continue to apply OPM's interpretation of the terms "relevant and necessary" for purposes of applying routine use "e" to all cases arising from conduct prior to the December 31, 1994 expiration of the FPM Letter.

As to those pending cases arising from conduct prior to December 31, 1994, the FPM Letter contains two requirements that a union must satisfy in order to establish that disclosure of requested information is consistent with routine use "e": (1) the information must be "relevant" to the express purpose for which it is sought, meaning that the nature of the information must bear a traceable, logical, and significant connection to the purpose to be served; and (2) the information must be "necessary," meaning that there are no adequate alternative means or sources for satisfying the union's informational needs. In clarifying this second requirement, the FPM Letter explains that it is to be determined on a case-by-case basis; the union "must show that it has a particularized need for the information in a form that identifies specific individuals, and that its information needs cannot be satisfied through less intrusive means, such as by releasing records with personally-identifying information deleted."

Based on OPM's interpretation of its routine use, the "relevance" of requested information must be shown for any requested information, including those portions of the information which identify particular individuals. It also must be established to trigger routine use "e" that the union has a particularized need for the information in a form that identifies specific individuals and that the union's interests in the information cannot be satisfied by any less intrusive means which does not identify particular individuals, such as deleting personally identifying information.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

Note the different approaches used in determining whether there is a particularized need for information under section 7114(b)(4) of the Statute and whether information is "necessary and relevant" within the meaning of the OPM routine use statements. Necessity under the Statute is determined under the IRS, KC particularized need standard, while "necessary and relevance" is determined consistent with the FPM letter.

The Authority also stated in footnote 10 in FAA, Little Rock that "[t]he consequence, if any, of the abolishment of the FPM Letter in cases arising after December 31, 1994, is not at issue in this case." Should a situation arise concerning a request for information after December 31, 1994: where the Region has determined a particularized need under IRS, KC exists for personally identifying information; the FOIA exception is determined not to be applicable; and OPM/GOVT-2 is the controlling system of records, the Region should submit the case for advice to determine whether the OPM routine use is applicable. Similarly, any information cases concerning whether another routine use is applicable should be discussed with the Office of the General Counsel prior to taking dispositive action.

SECTION 2 - INVESTIGATING WHETHER THE PRIVACY ACT BARS DISCLOSURE OF THE REQUESTED INFORMATION

The Regional Offices must ascertain whether the requested information is barred from disclosure by the Privacy Act. When investigating unfair labor practice charges alleging a refusal to supply information under section 7114(b)(4) of the Statute, the Regions should initially inquire whether the requested information is contained in a "system of records" under the Privacy Act, and if so, whether the information is disclosable either under: the FOIA (usually analyzing Exemption6); a routine use for that system of records; or some other Exception to the Privacy Act.

The prohibition against disclosing information prohibited from disclosure by law is a statutory prohibition which cannot be waived by an agency. In pleading unfair labor practice complaints alleging violations of section 7114(b)(4) of the Statute, the Regions allege that the information which is the subject of the complaint is not barred from disclosure by law. Thus, even if not specifically raised by the agency in response to the union's request or during the investigation, the Regions should investigate and determine whether the Privacy Act bars disclosure of the requested information.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

This requires the Regions when investigating a refusal to furnish requested information to determine:

1. Whether the requested information is contained within a system of records under the Privacy Act;

2. If so, whether disclosure of that information would implicate privacy interests;

3. If so, the nature and significance of those privacy interests;

4. If there are employee privacy interests, whether there is a public interest in the requested information cognizable under the FOIA; and

5. If so, how disclosure of the information requested will serve that public interest.

Personal Identifiers

In cases subsequent to FAA, Westbury which concern requests for information containing personal identifiers, such as United States Air Force Headquarters, 442nd Fighter Wing (AFRES), Richards-Gebaur Air Force Base, Missouri, 50 FLRA No. 66, 50 FLRA 455, 460-61 (1995) (Richards-Gebaur AFB), the Authority has yet to find any support to establish that the release of personal identifiers enhances any public interest which has been articulated in the documents. Rather, the Authority consistently has found, as most recently in Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 51 FLRA No. 31 (1995), that "the public interest that would be served by disclosure of the requested information also could be substantially, if not equally, served by the disclosure of sanitized information which does not identify individual employees by name or other identifying information." In addition, the Authority has held that when requested documents concern only one name-identified employee, "it is not possible to redact the documents to protect the identity whose privacy is at stake." The fact that the "employees' identity is known to the Union does not lessen [the employee's] privacy interests." U.S. Department of Justice, Federal Correctional Facility, El Reno, Oklahoma, 51 FLRA No. 52 (1995).

Please contact the Office of the General Counsel prior to issuing complaint in any case where a requested document is contained in a system of records and the information request encompasses personal identifiers.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

Regional Office Decision Making Process

When an unfair labor practice charge is filed alleging a violation of section 7114(b)(4), the Privacy Act is implicated and the parties are unable with the Region's assistance to agree on whether or to what extent requested information must be provided, the Regions should be guided by this decisional process:

Not contained in a system of records under the Privacy Act - If the requested information is not contained in a system of records under the Privacy Act, the Privacy Act is not a bar to disclosure and, if the other elements of section 7114(b)(4) are met, the Regions should issue an unfair labor practice complaint, absent settlement, consistent with the Office of the General Counsel Settlement Policy.

Contained in a system of records but no FOIA public interest in disclosure or applicable routine use - If the requested information is contained in a system of records and the investigation does not reveal any cognizable public interest under the FOIA or any applicable routine use, the charge should be dismissed, absent withdrawal, consistent with the Office of the General Counsel Quality of Unfair Labor Practice Investigations Policy and Scope of Investigations Policy.

Contained in a system of records and FOIA public interest established - If the requested information is contained in a system of records and the investigation reveals a cognizable public interest under the FOIA, the Regions should balance the privacy interest of employees against the public interest in disclosure. If the public interest in disclosure outweighs the employee privacy interests, the information is disclosable under the FOIA and thus, as an exception to the Privacy Act, that law does not bar disclosure. If the balance tips in favor of the employee privacy interests, the FOIA Exemption is triggered and the information is not releasable under the FOIA. As such, the Privacy Act exception is not triggered and the Privacy Act bars disclosure. The Regions should then dismiss the charge, absent withdrawal, consistent with the Office of the General Counsel Quality of Unfair Labor Practice Investigations Policy and Scope of Investigations Policy. Please contact the Office of the General Counsel prior to issuing complaint in a case where a requested document is contained in a system of records and the Region concludes that a routine use is applicable.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

Agency failure to articulate its privacy interests to the union - In situations where the Region finds a sufficient request and a particularized need for requested information, as well as satisfaction of the other elements in section 7114(b)(4), and the agency has refused to communicate to the union that it is relying on the Privacy Act as a bar and has failed to explain to the union its privacy interests, any complaint which issues should allege an independent bad faith bargaining unfair labor practice in violation of section 7116(a)(5) of the Statute. Similarly, even if the Region determines that there is no statutory requirement to furnish requested information because disclosure is barred by the Privacy Act, an agency refusal to articulate to the union its reliance on the Privacy Act and to explain to the union its privacy interests, should be alleged to be an independent bad faith bargaining unfair labor practice in violation of section 7116(a)(5) of the Statute. As a remedy the Region should seek an order requiring the agency to engage in such communication for future requests, but should not require disclosure of the information.

Parties Can Use an Interest Based Approach to Resolve Information Disputes Prior to the Filing an Unfair Labor Practice Charge

The Regions should also encourage the parties to utilize an interest based approach to resolve themselves disputes over information requests prior to the filing of an unfair labor practice charge. The parties may follow these steps in resolving any dispute or the disclosure of information:

1. **Identify the particular information which is the subject of the disputed request.** Both parties should have the same understanding of exactly what information the union is requesting; including whether personal identifiers are to be included or may be deleted and the time period covered by the request.

2. **The union should articulate exactly why it needs the requested information.** The union should explain exactly how the union intends to use the requested information and how that use of the information relates to the union's role as the exclusive representative. This explanation should extend to each different type of information requested, as well as for the time period(s) covered by the request and the need for personal identifiers, if applicable.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

3. **The agency should articulate exactly what concerns it has about disclosing the information.** The agency should explain exactly what are its countervailing anti-disclosure interests; i.e., what concerns does the agency have in disclosing the information.

4. **The parties should then brainstorm alternatives as to how the union may obtain the information it requires while accommodating the agency's anti-disclosure interests.** The parties should explore alternative forms or means of disclosure. Again, the parties should focus not on whether the union has a statutory right to certain information in the format requested, but rather what information does the union require to adequately represent its members and how can that information be furnished to accommodate competing agency anti-disclosure interests.

5. **If the requested information is contained in a system of records under the Privacy Act, the union should explain how disclosure of the requested information, including any personal identifiers and the time period encompassed by the request, would shed light on the agency's performance of its statutory duties or otherwise inform citizens of the activities of the Government.**

6. **The agency should then explain the employee privacy interests in the information which are behind the agency's concerns in disclosing the information.**

7. **If the agency's concerns relate to the identification of particular employees the parties should jointly explore alternative ways to release the information without those personal identifiers.** For example, the agency could delete the personal identifiers and code the documents in a manner that allows for the grouping of the documents by category which does not identify individuals and which allows for later identification of the documents if further more targeted information is needed.

Footnotes Follow:

1/ Section 7114(b)(4) of the Statute provides that the obligation to bargain in good faith includes the obligation:

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

7 Labor Relations Information (Continued):

E. Union Information Requests (Continued)

2/ The Privacy Act regulates the disclosure of any information contained in an agency "record" within a "system of records," as those terms are defined in the Privacy Act, that is retrieved by reference to an individual's name or some other personal identifier. 5 U.S.C. 552a(1),(4), (5). With certain enumerated exceptions, the Privacy Act prohibits the disclosure of personal information about Federal employees without their consent. Section (b)(2) of the Privacy Act provides that the prohibition against disclosure is not applicable if disclosure of the requested information would be required under the Freedom of Information Act, 5 U.S.C. 552 (FOIA). Exemption (b)(6) of the FOIA (Exemption 6) provides, in turn, that information contained in "personnel and medical files and similar files" may be withheld if disclosure of the information would result in a "clearly unwarranted invasion of personal privacy [.]" 5 U.S.C. 552(b)(6). If such an invasion would result, then disclosure is not required by the FOIA. In addition to the exception relating to the FOIA, Exception (b)(3) of the Privacy Act permits disclosure of information "for a routine use as defined in subsection (a)(7) of this section ..." 5 U.S.C. 552a(b)(3). Subsection (a)(7), in turn, defines routine use as "the use of such record for a purpose which is compatible with the purpose for which it was collected[.]

8 Benefits

A. Retirements (CSRS/FERS Information)

Web-Based Retirement Calculator:

USDA has a new web-based retirement calculator, FRB Web, that is now available to all employees. The FRB Web calculator allows the Agency and the employee to create retirement estimates based on updated service history, employee's choice of retirement date and other "what-if" scenarios the employee may have. FRB Web is updated by the National Finance Center each pay period to provide current salary and benefits information.

It is highly encouraged that employees use FRB Web to get a complete picture of all retirement benefits. FRB is a comprehensive retirement calculator that allows the employee to compute CSRS/FERS retirement benefits, CSRS Offset at age 62, survivor benefits, effects of paying deposit/redeposit/military deposit, estimate Social Security benefits, and compute current and future TSP contributions and earnings. The FRB Web calculator allows the employee to generate instant retirement estimates for one or more retirement dates than can be updated as needed.

The receive a password to access FRB Web, please call Kansas City Human Resources Office, Employee and Labor Relations Section (816) 926-6643 or Washington, D.C. Human Resources Division, Performance Management, Benefits and Awards Branch (202) 401-0681, as applicable.

As a security precaution, your password will be sent to your Outlook account. The FRB Web calculator is at:

https://asp.gdcii.com/dashboard/usdaoa.

8 Benefits (Continued):

A. Retirements (CSRS/FERS Information) (Continued)

Federal Employees Retirement System (FERS)

There are three categories of benefits in the Federal Employees Retirement System (FERS) Basic Benefit Plan:

☑ **Immediate** ☑ **Early** ☑ **Deferred**

Eligibility is determined by your age and number of years of creditable service. In some cases, you must have reached the **Minimum Retirement Age (MRA)** to receive retirement benefits. Use the following chart to figure your Minimum Retirement Age.

If you were born	Your MRA is
Before 1948	55
In 1948	55 and 2 months
In 1949	55 and 4 months
In 1950	55 and 6 months
In 1951	55 and 8 months
In 1952	55 and 10 months
In 1953 through 1964	56
In 1965	56 and 2 months
In 1966	56 and 4 months
In 1967	56 and 6 months
In 1968	56 and 8 months
In 1969	56 and 10 months
In 1970 and after	57

☑ ***Immediate Retirement:***

An immediate retirement benefit is one that starts within 30 days from the date you stop working.

If you meet one of the following sets of age and service requirements, you are entitled to an immediate retirement benefit:

Age	Years of Service
62	5
60	20
MRA	30
MRA	10

8 Benefits (Continued):

A. Retirements (CSRS/FERS Information) (Continued)

If you retire at the MRA with at least 10, but less than 30 years of service, your benefit will be reduced by 5 percent a year for each year you are under 62, unless you have 20 years of service and your benefit starts when you reach age 60 or later.

Early Retirement:

Refers to special eligibility rules as follows:

The early retirement benefit is available in certain involuntary separation cases and in cases of voluntary separations during a major reorganization or reduction in force. To be eligible, you must meet the following requirements:

Age	Years of Service
50	20
Any Age	25

Deferred Retirement:

Refers to delayed payment of benefit until criteria are met, as follows:

If you leave Federal service before you meet the age and service requirements for an immediate retirement benefit, you may be eligible for deferred retirement benefits. To be eligible, you must have completed at least 5 years of creditable civilian service. You may receive benefits when you reach one of the following ages:

Age	Years of Service
62	5
MRA	30
MRA	10

If you retire at the MRA with at least 10, but less than 30 years of service, your benefit will be reduced by 5 percent a year for each year you are under 62, unless you have 20 years of service and your benefit starts when you reach age 60 or later.

8 Benefits (Continued):

A. Retirements (CSRS/FERS Information) (Continued)

Civil Service Retirement System (CSRS)

There are five categories of benefits under the Civil Service Retirement System (CSRS). Eligibility is based on your age and the number of years of creditable service and any other special requirements. In addition, you must have served in a position subject to CSRS coverage for one of the last two years before your retirement. If you meet one of the following sets of requirements, you may be eligible for an immediate retirement benefit. An immediate annuity is one that begins within 30 days after your separation.

☑ **Optional** ☑ **Special Optional** ☑ **Early Optional**

☑ **Discontinued Service** ☑ **Disability**

If you leave Federal service before you meet the age and service requirements for an immediate retirement benefit, you may be eligible for deferred retirement benefits. To be eligible, you must have at least 5 years of creditable civilian service and be age 62.

Optional

Age	Years of Service
62	5
60	20
55	30

Special Optional

Age	Years of Service
50	20
Any Age	25

Special Requirements: You must retire under special provisions for air traffic controllers or law enforcement and firefighter personnel. Air traffic controllers can also retire at any age with 25 years of service as an air traffic controller.

8 Benefits (Continued):

A. Retirements (CSRS/FERS Information) (Continued)

Early Optional

Age	Years of Service
50	20
Any Age	25

Special Requirements: Your agency must be undergoing a major reorganization, reduction-in-force, or transfer of function determined by the Office of Personnel Management. Your annuity is reduced if you are under age 55.

Discontinued Service

Age	Years of Service
50	20
Any Age	25

Special Requirements: Your separation is involuntary and not a removal for misconduct delinquency.

Disability

Age	Years of Service
CSRS Any Age	5
FERS Any Age	18 months

Special Requirements: You must be disabled for useful and efficient service in your current position and any other vacant position at the same grade or pay level within your commuting area and current agency for which you are qualified. The disability must have onset prior to retirement or within one year of separation. The one year requirement may be waived in cases of mental incompetence.

8 Benefits (Continued):

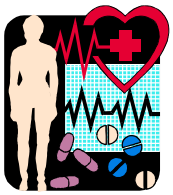
B. Office of Workers' Compensation (OWCP)

Introduction

The ***Federal Employees' Compensation Act (FECA)*** provides monetary compensation, medical care and assistance, vocational rehabilitation and re-employment rights to all Federal employees who sustain injuries or contract illnesses/diseases while in the performance of their official duties. To qualify for benefits the employee (or survivor) must establish that the injury/illness (or death) was related to his/her employment, or that a pre-existing injury or illness was aggravated as a result of discharging his/her official duties. The FECA is administered by the Department of Labor's Office of Workers' Compensation Programs (OWCP).

Benefits

Medical Benefits - The FECA provides compensation for any medical services needed to provide treatment to counteract or minimize the effects of any condition, disease, or injury judged to be causally related to employment with the Federal Government. There is no limit on the monetary amount of medical expenses paid, nor on the length of time for which they are paid, as long as the need for medical treatment can be substantiated and related to the injury or disease sustained on the job. Compensation will be paid for first aid, medical treatment, hospitalization, and physician's fees, as well as for any drugs, appliances, or other supplies directed for use by a qualified physician. The employee is entitled to the use of Federal medical facilities and physicians, but may elect to utilize the services of the hospital and physician of his or her choice. The reimbursable services of chiropractors under the FECA are limited by statue to physical examination, related laboratory tests and X-rays to diagnose a subluxation of the spine; and treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by X-ray. One exception to medical care is that OWCP will not pay for any preventative treatment.



Compensation - If the employee suffers a job-related traumatic injury he/she is entitled to a continuation of regular pay for the period in which he or she is disabled, not to exceed 45 calendar days. If the disability incurred extends beyond 45 days, the employee is entitled to compensation for wage loss equal to 66b percent of his or her regular pay following a 3-day waiting period. If the employee has one or more dependents or spouse who resides in the same household, compensation will be continued at a rate equal to 75 percent of his or her regular pay. Compensation is payable for the duration of the disability. In cases where disability extends more than 14 days beyond the termination of the 45-day continuation of pay, or there is permanent disability, the 3-day waiting period can also be claimed for compensation.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

If an employee is unable to work as a result of an occupational illness or disease he or she is eligible, after a 3-day waiting period, for compensation equal to 66-2/3 percent of his or her regular pay. If the employee has one or more dependents or spouse who resides in the same household, compensation will be made at a rate equal to 75 percent of the employee's regular pay. If a disability extends more than 14 days, or is followed by permanent disability, the 3-day waiting period can also be claimed for compensation. In addition to the compensation benefits such as those described above, the FECA provides for limited term payments in cases where an employee suffers serious disfigurement of the head, face, or neck, or for anatomical loss. Benefits under these provisions are calculated in the same manner as those paid for permanent total disabilities (66-2/3 percent of the employee's regular pay, or 75 percent in cases where the employee has spouse or dependents), but are paid for a specified period of time which is proportional to the severity of loss.

Definitions

Traumatic Injury - A traumatic injury is defined as a wound or other condition caused by external forces including physical stress and strain. The injury must be identifiable as to time and place of occurrence and member or function of the body affected. It must be caused by a specific event or incident or series of events or incidents within a single tour of duty.

Occupational Illness - An occupational illness (disease) is defined as being produced by system infections, continued or repeated stress or strain, exposure to toxins, poison fumes, etc., in the work environment over a longer period of time. In order to qualify as a disease, the injury must be caused by exposure or activities on at least two days.

Continuation of Pay (COP) - It is the continuation of the employee's regular pay with no charge to sick or annual leave. It is **only given in traumatic injury cases** (claims on Form CA-1) and may not exceed 45 calendar days. To qualify for COP, the employee must give written notice of injury **within 30 days** from date of injury, and present medical evidence supporting the disability **within 10 calendar days** on CA-1.

In cases where there is no immediate time loss, the first day of COP must be taken within 45 days from date of injury. In cases where the employee has immediate time loss and then returns to work, allow 45 days from the first day the employee returns to work to begin using any remaining COP days. For any additional time loss after the 45 days of COP, the employee would have the option of using their annual and/or sick leave or LWOP and file for compensation.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

One important element to remember, COP must be charged in one day increments. Example: The employee reports to work at 8 a.m., goes to a therapy session at 10 a.m., returns to work at 12 noon and works the rest of the day. One day of COP is charged to the employee, the timekeeper should indicate in the remarks section of the time and attendance record the balance of the COP.

Recurrence - A recurrence of a traumatic injury or occupational illness occurs when the same injury/illness causes additional time loss from pay status after the employee has returned to duty status. EXAMPLE: An employee injuries his/her knee, returns to work and falls down and injuries the same knee, this would be a new injury (file a new CA-1). However, if the employee returns to work and for no apparent reason develops pain in the injured knee, this is recurrence.

One important element of recurrences, if there is a recurrence of a traumatic injury which causes additional time loss within 90 days of the first day the employee returns to work following the original injury and the employee has remaining days of COP available, the employee is eligible to use the remaining days.

Controversion - This is the process by which a manager challenges an employee's claim to COP. If the Controversion is clearly based on ***one of the following nine (9) categories*** the agency is required to terminate (or not begin) COP. It should be remembered that OWCP makes all final determinations and can overturn the agency controversion and require that COP be paid.

1. Disability results from an occupation disease/illness; or
2. The employee is excluded by 5 U.S.C. 8101(1)B or E; or
3. The employee is neither a citizen nor a resident of the United States or Canada; or
4. The injury occurred off the premises and the employee was not involved in official "off premise" duties; or
5. The injury was caused by the employee's willful misconduct, intent to bring about injury or death of self or another person, or was caused by the employee's intoxication; or
6. The injury was not reported within thirty (30) calendar days following the injury; or
7. Work stoppage first occurred ninety (90) calendar days or more following the injury; or
8. The employee initially reports the injury after his/hr employment has terminated; or
9. The employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, Work Study Programs or other similar groups.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

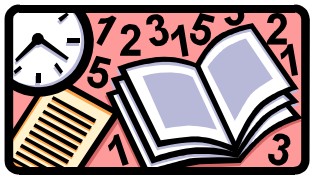
The situations listed above are the only occasions in which COP may be terminated or simply never begun. However, there may be situations wherein a manager may controvert a claim for COP that does not satisfy the aforementioned criteria. This may occur when the manager has no knowledge of the circumstances which precipitated a claim and there are no witnesses, no physical evidence of injury, or other substantiation for the claim, or when there is reason to doubt the validity of the claim. In these cases COP must be allowed but a controversion will serve to alert the OWCP District Office that the Agency has no firsthand knowledge of the injury/illness as described by the employee.

Light Duty and Re-employment - If the physician's report indicates the employee may return to work in a light duty status, the supervisor and/or will need to submit a CA-17 to the physician to get a better understanding of what limitations the employee may have. If the employee refuses to accept the work offered or fails to respond to the job offered within 5 workdays the agency should terminate COP, if applicable.

Employees who have fully or partially recovered from employment related injuries have certain job retention rights. Any employee who recovers within 1 year from the date compensation begins has mandatory restoration rights to his/her position or its equivalent. Over 1 year, the Agency is to grant priority consideration.

Compensation will be terminated if medical evidence indicates the employee can return to the job without limitations. Employees who have a permanent disability are entitled to file for a schedule award. The schedule award is paid with the medical evidence establishes the effected part of the body has reached maximum medical improvement (usually 1 year from the last medical treatment). The back, heart or brain is excluded from a schedule award, however, compensation for wage loss is payable.

Leave Buy Back - In order to "buy back" leave, you will need to file a CA-7 and then the T&A records will be corrected to show you in a non-pay status. The employee will arrange to repay the Agency the difference between the leave used based on 100% of the employee's usual wage rate and the compensation rate. At that time, the Agency will restore the leave to the employee's leave record.



8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Reporting a Job Related Injury or Illness

The following forms are used to report a job-related injury or illness:

Form CA-1, "Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation" is the form to use when reporting a traumatic injury.

CA-1 form ***must be filed within 30 days*** of the date of injury to receive continuation of pay (COP) for a disabling traumatic injury. The employee ***must provide medical evidence*** of the related-injury disability within ***10 workdays***.

Form CA-2, "Federal Employee's Notice of Occupational Disease and Claim for Compensation", is the form for reporting an occupational disease.

Form CA-2a, "Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation" is the form to use if an injured employee is again disabled as a result of the original injury or injury or occupational disease.

Managers' Responsibilities

- Review all of the employee's statements.
- Complete "supervisor's" part of Forms CA-1, CA-2, or CA-2a, as required.
- Give employee a Receipt of Notice of Injury (attached to the CA form)
- Advise the employee who has sustained a job-related traumatic injury, that may become disabling, of his/her right to elect Continuation of Pay (COP) or to use annual or sick leave.
- Send completed forms to Human Resources Office, Employee and Labor Relations Branch/Section.
- Inform employees of his/her right to select any qualified physician or hospital generally within 25 miles of the employee's home or worksite, or place of injury.
- Advise employee of the availability of light duty. Indicate specific physical and mental requirements of the job.

Managers should advise employees that all instances of continuation of pay and/or compensation must be supported by medical documentation ***within 10 workdays***. The medical documentation should be forwarded through the Employee & Labor Relations Branch/Section to the OWCP District Office for adjudication.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

In the event an employee is claiming that he/she has developed an occupational illness the employee should be granted whatever leave that is requested. It is preferable, however, that the employee be on leave without pay during any period of incapacitation so as to alleviate the logistical problems normally associated with "buying back" one's used annual or sick leave. However, many employees cannot afford to wait the lengthy period of time that adjudication requires (i.e., two months to one year) and will choose to take annual or sick leave and this is their prerogative. This same decision will face employees who have completed their 45 days COP (in traumatic injuries) and are still incapacitated for duty. In the event an employee has opted to use annual or sick leave the employee should contact the Employee & Labor Relations Branch/Section upon returning for duty so that a buy back of the leave used may be explained and processed if so desired. Managers should be aware that while a employee is awaiting adjudication of a claim for compensation by the OWCP District Office, he/she is entitled to use available sick or annual leave, or LWOP, as requested. In cases where LWOP is requested and granted, the manager is required to submit a Standard Form 52, Request for Personnel Action, to the Human Resources Office, when it is anticipated that an employee will be on LWOP for thirty (30) days or more.

Similarly, when the employee returns to duty, an appropriate SF-52 should also be submitted. The manager will also be responsible for notifying the Employee & Labor Relations Branch/Section upon the employee's return to duty.

When there is doubt as to the actual medical condition of an employee, managers should not hesitate in submitting a Form CA-17, Duty Status Report, to the employee's attending physician.

If a manager believes that a claim has the appearance of possible fraud, he/she should contact the Employee and Labor Relations Branch/Section immediately to determine whether an Inspection referral is warranted.

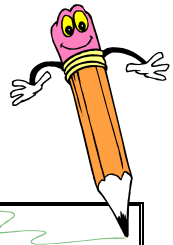
There will be occasions wherein an employee may be incapacitated for an indefinite period. In such situations the manager should contact the Employee & Labor Relations Branch/Section for assistance. Managers are urged to utilize all options at their disposal to retain employees on the rolls and should recommend removal only after all options have been exhausted.

Managers are urged to contact the Employee & Labor Relations Branch/Section, for assistance in providing reasonable accommodation to employees who have returned to duty with a qualified handicap condition. Such accommodation is required under the Rehabilitation Act of 1973. The degree to which these efforts are conducted and documented will have great impact on whether or not the agency can sustain a potential reduction in grade or removal should the employee's performance decline and remedial action is required.

Managers will refer any inquiries concerning FECA to which he/she is unable to respond to the Employee & Labor Relations Branch/Section.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)



Claims Processing Procedures for Supervisors and/or Field Office Managers:

IF AN EMPLOYEE IS INJURED WHILE IN THE PERFORMANCE OF DUTY AND YOU ARE A MANAGER OR SUPERVISOR OF THAT INJURED EMPLOYEE		
AND. . .		**THEN YOU MUST. . .**
1	The injured employee requires medical treatment for his or her injury and this is their **initial visit** to the physician.	Notify the Worker's Compensation Program Manager in your State, within 4 hours of the injury, and if appropriate, request that they immediately fax **Form CA-16** (Authorization for Examination and/or Treatment) and **overnight an Injury Packet** to your attention. Upon receipt of the faxed **Form CA-16,** you must complete **Part A within four hours of injury notification** and give it to the injured employee.
2	There is no time to complete a Form CA-16.	You **may** authorize medical treatment by telephone and fax the completed form to the medical facility within 48 hours of the call. **Retroactive issuance of Form CA-16 is usually not permitted under other circumstances.**
3	The employee delayed reporting the injury several days after the fact or did not request medical treatment within 24 hours of the injury.	You **may still authorize medical care** using Form CA-16. **Agency personnel are encouraged to use discretion in issuing authorizations for medical care under such circumstances, but employees should not be penalized for short delays in reporting injuries.** If you are unsure about what to do, contact T&T at (301) 446-6080.
4	The employee delayed reporting the injury over a week after the occurrence.	You **may refuse** to issue a CA-16 **if more than a week** has passed since the injury, on the basis that the need for immediate treatment would become apparent in that period of time. If you are unsure about what to do, contact T&T at (301) 446-6080.
UPON RECEIPT OF THE INJURY PACKAGE AND WITHIN 24 HOURS OF INJURY NOTIFICATION YOU MUST GIVE THE INJURED EMPLOYEE. . .		
1	A blank **Form CA-1** (Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation) **-OR- Form CA-2** (Notice of Occupational Disease and Claim for Compensation) – **DO NOT complete the Supervisor's portion prior to sending it to the employee.**	
2	**First complete Side A of Form CA-17** (Duty Status Report), which describes the physical requirements of the employee's job and notes the availability of any light or limited duty work, and give it to the employee. **Important: Form CA-17 is used to obtain interim medical reports about the employee's fitness for duty; it may be issued initially with Form CA-16.**	
3	A blank **Form CA-20** (Attending Physician's Report), which is attached to **Form CA-7** (Wage Loss/Permanent Impairment). **Important: DO NOT send Form CA-7 at this time.**	
4	A blank **Physical & Occupational Therapy Authorization Request Form**	
5	A blank **General Medical & Surgery Authorization Request Form**	
6	A blank **Durable Medical Equipment Authorization Request Form**	
7	The **Leave Buy-Back Memo**	

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

UPON RECEIPT OF THE INJURY PACKAGE AND WITHIN 24 HOURS OF INJURY NOTIFICATION YOU MUST GIVE THE INJURED EMPLOYEE. . .		
8	A blank **Form OWCP-1500** to **Form CA-16**	
9	For Occupational Diseases only, please issue the appropriate **Form CA-35** with Form CA-2.	
WHEN THE INJURED EMPLOYEE IS IN RECEIPT OF THE INJURY PACKET, THEN YOU MUST. . .		
1	Counsel the employee about the proper processing of the forms and the implications of not adhering to the forms processing and submission requirements.	
2	Inform the employee of the right to elect Continuation of Regular Pay (COP), annual or sick leave if time loss will occur due to the traumatic injury.	
3	Advise the employee whether COP will be controverted, and if so, whether pay will be terminated. **(Important: The basis for the action must be explained to the employee and the reason for controverting a claim must always be shown on Form CA-1).**	
4	Follow-up with the injured employee, **within 48 hours of injury notification,** to acquire the completed CA-1 or CA-2. Request that the injured employee fax or mail the form and re-emphasize the implications of not adhering to the forms submission requirements in a timely fashion. Upon receipt of the CA-1 or CA-2, you must complete the Supervisor's Report portion immediately and fax it to T&T at (301) 446-6084 and mail the original copy to 7833 Walker Drive, Suite 620, Greenbelt, MD 20770.	
5	Contact the injured employee, **within one week of injury notification,** to discuss his or her ability to return to some form of work and report your findings by documenting your comments in writing; then email or fax your comments to the Worker's Compensation Program Manager in your State.	
6	Request medical documentation from the injured employee for all absenteeism due to the work-related injury and fax all correspondence directly to T&T at (301) 446-6084 and send originals by mail to 7833 Walker Drive, Suite 620, Greenbelt, MD 20770.	
IF		**THEN YOU MUST. . .**
1	You doubt whether the employee's condition is from a work-related injury.	Indicate your comments on Forms CA-16 and CA-1.
2	The injured employee is treated at the agency's medical office after the date of injury.	Add the words "first aid" to the upper right corner of the Form CA-1 and submit the completed CA-1 directly to T&T either by fax (301-446-6084) or via mail at 7833 Walker Drive, Suite 620, Greenbelt, MD 20770, Attn: OWCP. **(Important: This rule applies as long as no leave or continuation of pay is charged and no medical expenses are incurred.)**
3	The injured employee does not obtain medical care or obtains only agency-sponsored care on the date of injury and no time loss is charged to either leave or COP.	Send **Form CA-1** directly to T&T either by fax (301-446-6084) or via mail at 7833 Walker Drive, Suite 620, Greenbelt, MD 20770, Attn: OWCP

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

	IF IT APPEARS THAT THE INJURED EMPLOYEE WILL REMAIN DISABLED BEYOND THE COP PERIOD OF 45 DAYS
1	Contact the Worker's Compensation Program Manager in your State regarding any questions about leave options and/or refer to the contractor's website at http://www.tandtmanagement.com/owcp/owcp.asp.
2	Continue to contact the employee on a weekly basis to discuss his or her ability to return to some form of work and report your findings by documenting your comments in writing; then email or fax the report to the Workers' Compensation Program Manager in your State. This must be done until the employee returns to work or OWCP adjudicates the case, whichever comes first.
3	Request medical documentation (Form CA-20 or doctor's narrative) from the employee as often as needed for all absenteeism due to the work-related injury. This should be done on a weekly basis until the employee returns to work or OWCP adjudicates the case, whichever comes first. Page 12, Section D of the OWCP Publication CA-810 states that the supervisor should supply Form CA-20 to the employee as often as needed.
4	At the request of the Worker's Compensation Program Manager in your State, you must initiate and complete the supervisor's section of the CA-7 within 15 days of the end of COP.
5	Contact the injured employee to discuss leave options and request that they complete the employee's section of Form CA-7 and return it along with medical evidence within 5 days of receipt.
6	Follow-up with the employee to acquire the completed Form CA-7 and current medical documentation. Upon receipt, complete the "Employing Agency Portion" of the CA-7, sign and fax it (along with the current medical evidence), to the Worker's Compensation Program Manager in your State. Place the originals in the mail on the same day.
7	Monitor the injured employee's COP usage and request medicals (Form CA-20 or doctor's narrative) for all absenteeism due to the work-related injury.
	OTHER ACTIONS YOU MUST TAKE. . .
1	Handle accommodations and return to work cases as they occur. Notify T&T immediately when an employee returns to work by calling (301) 446-6080.
2	Ensure timely claim forms submission and coverage for the injured employees. This specifically relates to the timely acquisition and submission of the completed Forms CA-1 or CA-2 from the injured employee to T&T, as well as the timely submission of the CA-7 to the Worker's Compensation Program Manager in your State, to ensure that the injured employee receives timely compensation.
3	**Important: Upon notification of case adjudication you may discontinue the weekly reporting and contact with the injured employee. Your role will reduce significantly when OWCP adjudicates the case.**

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Employee Responsibilities

An employee injured at work should to the following:

- Report job-related injuries/illnesses to his/her manager immediately and obtain first aid, as necessary.
- If further medical treatment is needed, obtain authorization (Form CA-16) for treatment by a physician or hospital of the employee's choice.
- Complete a written report (Form CA-1, Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, or Form CA-2, Notice of Occupational Disease and Claim for Compensation) whichever is applicable, and submit it to the supervisor **within thirty (30) calendar days of the injury or illness.**
- Must furnish the supervisor with medical evidence of a disabling **traumatic injury within 10 workdays** of claiming continuation of pay (COP). This is normally done on a Form CA-20, Attending Physician's Report.

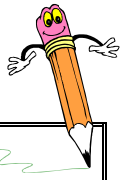
In the case of traumatic injuries lasting more than 45 days or occupational illnesses/diseases, the employee is responsible for submitting Form CA-7, Claim for Compensation on Account of Traumatic Injury or Occupational Disease. Subsequent claims for compensation should be completed on Form CA-7. A completed Form CA-7 should be submitted on a biweekly basis until the employee has returned to duty status at which time he/she must present to his/her manager a statement from the attending physician authorizing release and describing any work restrictions. It is preferred that such a release be submitted to the employee's manager prior to his/her anticipated return to duty so as to allow the manager adequate time to determine and arrange for appropriate measures in which to accommodate the employee's limitations, if any.

The employee should be aware that the OWCP is the adjudicator of all claims relating to the FECA. In the event a claim is disallowed by the OWCP, the affected employee will be advised by that office of all applicable appeal rights including the right to a hearing, reconsideration and final appeal to the Employees' Compensation Appeals Board.

Employees are responsible for submitting accurate and complete claim forms. Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation to which that person is not entitled, is subject to felony criminal prosecution and, under appropriate provisions, be punished by a fine or imprisonment, or both.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)



Claims Processing Procedures for Injured Employees:

	IF YOU ARE INJURED WHILE IN THE PERFORMANCE OF DUTY, THEN YOU MUST. . .
1	Notify your supervisor **within 24 hours of the date of injury** and request that an "Injury Packet" be sent "next-day" delivery.
	IMMEDIATE STEPS YOU MUST TAKE
1	If your supervisor has faxed you **Form CA-16** (Authorization for Examination and/or Treatment), then you **MUST** take the form with you during your initial doctor's visit and advise that the visit be billed to the Department of Labor's Office of Workers' Compensation Program. **(Important:** This form authorizes treatment is **good only for up to one week after the date of injury.** If more than a week has passed since you reported the injury, your supervisor may refuse to issue you a Form CA-16 on the basis that the need for immediate treatment would become apparent in that period of time. Therefore, **to avoid problems with your claim, notify your supervisor of any work-related injuries when they occur. Also note that in the event of an emergency, you should seek medical attention and not wait for any forms, but request that your supervisor send Form CA-16 and other relevant forms directly to your physician via fax.)**
2	Upon receipt of the Injury Packet, immediately complete the appropriate form (**Form CA-1,** Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation -or- **Form CA-2,** Notice of Occupational Disease and Claim for Compensation) and fax or hand-deliver it to your supervisor **within two (2) days of the date of injury. You may also download these forms at http://www.dol.gov/esa/regs/compliance/owcp/forms.htm.** When you return the form, ask for a signed copy for your records, which includes the completion of the Supervisor's Report. **Please DO NOT send forms directly to OWCP. Important: The contractor MUST send the Forms CA-1 and CA-2 to OWCP within 10 days of the injury. Failure to comply with the steps listed above could result in a delay in processing your claim and/or in the denial of your claim and/or benefits.**
3	Contact the appropriate Workers' Compensation Program Manager in your State, within three (3) days of delivering Form CA-1 or CA-2 to your supervisor, to ensure that they also have a copy of the completed form. If not, you should fax them a copy.
4	Take **Forms CA-17 and CA-20** from the Injury Packet with you to your initial doctor's visit. **(Important: Please check that the supervisor's portion of Form CA-17 is complete prior to giving it to your doctor. If not, ask your supervisor to complete their portion of the CA-17 and submit it to you right away. Form CA-20 will be used for all subsequent visits to the doctor. Your supervisor should provide additional CA-20s as often as needed.)**

	IF. . .	**THEN. . .**
1	You have already visited the doctor and given them Forms CA-17 and CA-20.	Follow-up with the doctor's office within 5 days from the date you delivered the forms to ensure that they returned them to OWCP and your supervisor. If not, request a fax copy of the forms and fax them to your supervisor. **Important: A medical report is required by the Office of Workers' Compensation Program before payment of compensation for loss of wages or permanent disability can be made to injured employees.**
2	Your doctor recommends physical or occupational therapy.	Deliver the Physical and Occupational Therapy Authorization Request Form, located in your Injury Package, to your doctor.
3	Your doctor recommends surgery or other general medical procedures	Deliver the General Medical & Surgery Authorization Request Form, located in your Injury Package, to your doctor.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

IF. . .		THEN. . .
4	Your doctor recommends special medical equipment.	Deliver the Durable Medical Equipment Authorization Request Form, located in your Injury Package, to your doctor.
5	You are incapacitated and cannot perform these tasks.	If able, identify in writing someone who is capable of acting on your behalf.
CONTINUATION OF PAY (COP) REQUIREMENTS		
IF. . .		**THEN. . .**
1	You are receiving Continuation of Pay (COP).	You **must** provide prima facie medical documentation, that supports your work-related injury, to your supervisor within ten (10) working days from the date of injury or you could risk termination of COP benefits.
2	Your doctor has returned Forms CA-17 and CA-20.	You **are not** required to provide **additional** prima facie medical documentation to your supervisor during this period of COP. **Important: Submitting the initial prima facie medical documentation is necessary to continue receiving COP. Failure to do so could result in delays and/or termination of your benefits.**
3	It appears that you will be disabled beyond the 45 day COP period.	You **must** complete **Form CA-7** (Claim for Compensation). Within 5 days of receipt of the CA-7, attach current medical documentation and fax or hand-carry it to your supervisor. For leave buy back information, refer to http://www.tandtmanagement.com/owcp/owcp.asp
4	You do not qualify for COP	You **must** complete Form CA-7 immediately, attach current medical documentation, and fax or hand-carry it to your supervisor. For leave buy-back information, refer to http://ww.tandtmanagement.com/owcp/owcp.asp
5	You will be claiming a Schedule Award	You **must** complete Form CA-7 and fax or hand-carry it to your supervisor when the doctor determines that you have reached maximum medical improvement. **Important: You are responsible for the necessary followup with the Workers' Compensation Program Manager in your State to ensure that the CA-7 is received and processed.**
OTHER ACTIONS YOU MUST TAKE		
1	Return to work as soon as medically possible.	
2	Call your supervisor and timekeeper on a weekly basis to update them on **all** absenteeism relevant to the work-related injury and the status of your ability to return to work in a light or full duty status.	
3	Continue to submit medical evidence (Form CA-20 or doctor's narrative) to your supervisor, as requested, for **all** days taken off from work due to the work-related injury.	
4	Ensure that copies of all medical documents sent to your supervisor are also received by the Workers' Compensation Program Manager in your State.	
5	At the request of your supervisor, contact your doctor's office (billing department) to resolve billing errors. **(Important: This is necessary because FECA law indicates that the injured employee is the only one with the legal right to contact the doctor by telephone.)**	

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

	OTHER ACTIONS YOU MUST TAKE
6	Select a physician that meets the definition of "physician" under the FECA and who must not have been excluded from payment under the program. **Important: Employees who wish to change physicians after the initial choice must contact OWCP in writing for approval and include the reasons for wanting to change.** See Chapter 6 of OWCP Publication 810 and/or OWCP website: http://www.dol.gov/esa/regs/compliance/owcp/fecacont.htm
7	If you receive a bill from your doctor, send it directly to the following address: U.S. Department of Labor, DFEC Central Mailroom, P.O. Box 8300, London, KY 40742-8300 and be sure to include your claim number on **every** page you send. If you have not been assigned a claim number, contact T&T at (301) 446-6080 to see if a claim number has been assigned to you. Once you are given the claim number, then forward the bill to the above-mentioned address.
8	If you want to check the status of a bill or claim for reimbursement, you may go directly to the OWCP website at http://owcp.dol.acs-inc.com. This service is also available 24 hours a day via their Interactive Voice Response (IVR) system. To access the IVR, please dial (866) 335-8319. To speak with a Customer Service Representative you may call toll-free at (850) 558-1818. This number is available Monday thru Friday, 8am – 8pm, EST.
9	Direct all other inquiries regarding your claim to T&T via email at owcpinquiry@mail.tandtmanagement.com. You may also contact Loren Woodson by phone at (301) 446-6080.
10	**Important: A number of statutory provisions (20 CFR – 10.16) make it a crime to file a false or fraudulent claim or statement with the government in connection with a claim under the FECA, or to wrongfully impede a FECA claim.**
11	**Important: Administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801-12, to impose civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under the FECA.**
12	**Important: Several sources describing the provisions of the law and how they are applied are available in printed form and on OWCP's Home Page at http://www.dol.gov/esa/regs/compliance/owcp/fecacont.htm**
13	For additional information, please visit the contractor's website at http://www.tandtmanagement.com/owcp/owcp.asp

Employee & Labor Relations Branch/Section Responsibilities

The Employee & Labor Relations Branch/Section will advise and assist employees and supervisors as needed and will maintain a supply of required forms.

ELRB/Section will serve as liaison between supervisors and the Office of Workers' Compensation Office (OWCP).

ELRB/Section is responsible for submitting all OWCP claims to the OWCP District Office and maintaining a file copy in the branch. Therefore all information, forms, requests, and questions regarding an injury or illness are to be channeled through the Employee & Labor Relations Branch/Section prior to being forwarded by the office to the OWCP.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Questions and Answers

Q. Is it necessary to report all injuries that occur at work, even minor injuries such as a scratched finger or bumped knee?

Yes. All injuries should be reported, since a seemingly minor injury may develop into a more serious condition. Benefits cannot be paid unless an injury is reported.

Q. Are only regular, full-time employees eligible for FECA Benefits?

No. FECA coverage is extended to Federal employees regardless of the length of time on the job or the type of position held.

Q. Is an employee considered to be in performance of duty for compensation purposes 24 hours a day while in travel status?

An employee in travel status is covered 24 hours a day for all activities that are reasonably incident to the employment being performed in such status.

Q. Is an employee covered by FECA if injured while at lunch?

Yes. If the employee is on Government premises for the purpose of performing service and is injured while at lunch, he/she is covered.

Injuries which occur during lunch hour off the premises are not ordinarily covered unless the employee is in travel status or is performing regular duties off premises.

Q. Is an employee entitled to compensation benefits if injured while on coffee break?

Generally speaking, if an employee is on Government premises for the purpose of performing service and is injured, there is coverage under FECA.

Q. Is there a time limit for filing notice of injury and claim for compensation?

Yes. A claim must be filed within 3 years of the date of injury. (**NOTE:** The CA-1 form **must be filed within 30 days** of the date of injury to receive continuation of pay (COP) for a disabling traumatic injury.)

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Q. What is Continuation of Pay (COP)?

COP is continuation of an employee's regular salary for up to 45 calendar days of wage loss due to disability and/or medical treatment following a traumatic injury. The intent of this provision is to eliminate interruption of the employee's income while OWCP is processing the claim.

Q. Can the employing agency require the employee to use annual or sick leave during the 45-day COP period pending OWCP's adjudication of a traumatic injury?

No. The employee cannot be required to use leave when he/she suffers a traumatic injury. (**NOTE:** The CA-1 form **must be filed within 30 days** of the date of injury to receive continuation of pay (COP) for a disabling traumatic injury and **must provide medical evidence** of the related injury disability within **10 workdays.**)

Q. What happens if the injured employee's disability goes beyond the 45-day period?

If it appears that the disability will continue beyond 45 days, the employee and the employee's supervisor should complete Form CA-7, "Claim for Compensation on Account of Traumatic Injury or Occupational Disease."

Q. Can an employee receive compensation payments while on sick or annual leave?

No. An employee must be in a leave-without-pay status before compensation for wage loss is payable.

Q. Does an employee have to use any or all accumulated sick or annual leave before compensation may be paid?

No. An employee has a choice of using sick **or** annual leave **or** going on leave without pay and claiming compensation. The injured employee makes this decision.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Q. If an employee uses sick or annual leave due to an on-the-job injury, is there any method by which the leave can be restored?

Leave may be repurchased, subject to agency approval, if the claim is approved and medical evidence shows the employee was unable to work because of the injury during the period claimed. The employee who chooses to use sick or annual leave may request a Leave Buy Back.

Q. Does the employing agency have the authority to approve or disallow a claim?

No. Only OWCP has the authority to adjudicate a claim for compensation. While the employing agency has a role in paying or withholding COP leave, even this action is reviewed in every case by OWCP.

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation

Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

Employee: Please complete all boxes 1 - 15 below. Do not complete shaded areas.
Witness: Complete bottom section 16.
Employing Agency (Supervisor or Compensation Specialist): Complete shaded boxes a, b, and c.

Employee Data

1. Name of employee (Last, First, Middle) | 2. Social Security Number

3. Date of birth Mo. Day Yr. | 4. Sex ☐ Male ☐ Female | 5. Home telephone | 6. Grade as of date of injury Level Step

7. Employee's home mailing address (Include city, state, and ZIP code) | 8. Dependents ☐ Wife, Husband ☐ Children under 18 years ☐ Other

Description of Injury

9. Place where injury occurred (e.g. 2nd floor, Main Post Office Bldg., 12th & Pine)

10. Date injury occurred Mo. Day Yr. | Time ☐ a.m. ☐ p.m. | 11. Date of this notice Mo. Day Yr. | 12. Employee's occupation

13. Cause of injury (Describe what happened and why)

14. Nature of injury (Identify both the injury and the part of body, e.g., fracture of left leg)

a. Occupation code | b. Type code | c. Source code | OWCP Use - NOI Code

Employee Signature

15. I certify, under penalty of law, that the injury described above was sustained in performance of duty as an employee of the United States Government and that it was not caused by my willful misconduct, intent to injure myself or another person, nor by my intoxication. I hereby claim medical treatment, if needed, and the following, as checked below, while disabled for work:

☐ a. Continuation of regular pay (COP) not to exceed 45 days and compensation for wage loss if disability for work continues beyond 45 days. If my claim is denied, I understand that the continuation of my regular pay shall be charged to sick or annual leave, or be deemed an overpayment within the meaning of 5 USC 5584.

☐ b. Sick and/or Annual Leave

I hereby authorize any physician or hospital (or any other person, institution, corporation, or government agency) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs (or to its official representative). This authorization also permits any official representative of the Office to examine and to copy any records concerning me.

Signature of employee or person acting on his/her behalf _____ **Date** _____

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided by the FECA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

Have your supervisor complete the receipt attached to this form and return it to you for your records.

Witness Statement

16. Statement of witness (Describe what you saw, heard, or know about this injury)

Name of witness | Signature of witness | Date signed

Address | City | State | ZIP Code

Form CA-1
Rev. Apr. 1999

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation

Official Supervisor's Report: Please complete information requested below:

Supervisor's Report

17. Agency name and address of reporting office (include city, state, and zip code) | OWCP Agency Code

OSHA Site Code

ZIP Code

18. Employee's duty station (Street address and ZIP code)

19. Employee's retirement coverage ☐ CSRS ☐ FERS ☐ Other, (identify)

20. Regular work hours From: ☐ a.m. ☐ p.m. To: ☐ a.m. ☐ p.m.

21. Regular work schedule ☐ Sun. ☐ Mon. ☐ Tues. ☐ Wed. ☐ Thurs. ☐ Fri. ☐ Sat.

22. Date of Injury Mo. Day Yr.

23. Date notice received Mo. Day Yr.

24. Date stopped work Mo. Day Yr. Time: ☐ a.m. ☐ p.m.

25. Date pay stopped Mo. Day Yr.

26. Date 45 day period began Mo. Day Yr.

27. Date returned to work Mo. Day Yr. Time: ☐ a.m. ☐ p.m.

28. Was employee injured in performance of duty? ☐ Yes ☐ No (If "No," explain)

29. Was injury caused by employee's willful misconduct, intoxication, or intent to injure self or another? ☐ Yes (If "Yes," explain) ☐ No

30. Was injury caused by third party? ☐ Yes ☐ No (If "No," go to item 32.)

31. Name and address of third party (Include city, state, and ZIP code)

32. Name and address of physician first providing medical care (Include city, state, ZIP code)

33. First date medical care received Mo. Day Yr.

34. Do medical reports show employee is disabled for work? ☐ Yes ☐ No

35. Does your knowledge of the facts about this injury agree with statements of the employee and/or witnesses? ☐ Yes ☐ No (If "No," explain)

36. If the employing agency controverts continuation of pay, state the reason in detail.

37. Pay rate when employee stopped work $ Per

Signature of Supervisor and Filing Instructions

38. A supervisor who knowingly certifies to any false statement, misrepresentation, concealment of fact, etc., in respect of this claim may also be subject to appropriate felony criminal prosecution.

I certify that the information given above and that furnished by the employee on the reverse of this form is true to the best of my knowledge with the following exception:

Name of supervisor (Type or print)

Signature of supervisor | Date

Supervisor's Title | Office phone

39. Filing instructions
☐ No lost time and no medical expense: Place this form in employee's medical folder (SF-66-D)
☐ No lost time, medical expense incurred or expected: forward this form to OWCP
☐ Lost time covered by leave, LWOP, or COP: forward this form to OWCP
☐ First Aid Injury

Form CA-1,

Rev. Apr. 1999

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation

Instructions for Completing Form CA-1

Complete all items on your section of the form. If additional space is required to explain or clarify any point, attach a supplemental statement to the form. Some of the items on the form which may require further clarification are explained below.

Employee (Or person acting on the employees' behalf)

13) Cause of Injury

Describe in detail how and why the injury occurred. Give appropriate details (e.g.: if you fell, how far did you fall and in what position did you land?)

14) Nature of Injury

Give a complete description of the condition(s) resulting from your injury. Specify the right or left side if applicable (e.g., fractured left leg: cut on right index finger).

15) Election of COP/Leave

If you are disabled for work as a result of this injury and filed CA-1 within thirty days of the injury, you may be entitled to receive continuation of pay (COP) from your employing agency. COP is paid for up to 45 calendar days of disability, and is not charged against sick or annual leave. If you elect sick or annual leave you may not claim compensation to repurchase leave used during the 45 days of COP entitlement.

Supervisor

At the time the form is received, complete the receipt of notice of injury and give it to the employee. In addition to completing items 17 through 39, the supervisor is responsible for obtaining the witness statement in Item 16 and for filling in the proper codes in shaded boxes a, b, and c on the front of the form. If medical expense or lost time is incurred or expected, the completed form should be sent to OWCP within 10 working days after it is received.

The supervisor should also submit any other information or evidence pertinent to the merits of this claim.

If the employing agency controverts COP, the employee should be notified and the reason for controversion explained to him or her.

17) Agency name and address of reporting office

The name and address of the office to which correspondence from OWCP should be sent (if applicable, the address of the personnel or compensation office).

18) Duty station street address and zip code

The address and zip code of the establishment where the employee actually works.

19) Employers Retirement Coverage.

Indicate which retirement system the employee is covered under.

30) Was injury caused by third party?

A third party is an individual or organization (other than the injured employee or the Federal government) who is liable for the injury. For instance, the driver of a vehicle causing an accident in which an employee is injured, the owner of a building where unsafe conditions cause an employee to fall, and a manufacturer whose defective product causes an employee's injury, could all be considered third parties to the injury.

32) Name and address of physician first providing medical care

The name and address of the physician who first provided medical care for this injury. If initial care was given by a nurse or other health professional (not a physician) in the employing agency's health unit or clinic, indicate this on a separate sheet of paper.

33) First date medical care received

The date of the first visit to the physician listed in item 31.

36) If the employing agency controverts continuation of pay, state the reason in detail.

COP may be controverted (disputed) for any reason; however, the employing agency may refuse to pay COP only if the controversion is based upon one of the nine reasons given below:

a) The disability was not caused by a traumatic injury.

b) The employee is a volunteer working without pay or for nominal pay, or a member of the office staff of a former President;

c) The employee is not a citizen or a resident of the United States or Canada;

d) The injury occurred off the employing agency's premises and the employee was not involved in official "off premise" duties;

e) The injury was proximately caused by the employee's willful misconduct, intent to bring about injury or death to self or another person, or intoxication;

f) The injury was not reported on Form CA-1 within 30 days following the injury;

g) Work stoppage first occurred 45 days or more following the injury;

h) The employee initially reported the injury after his or her employment was terminated; or

i) The employee is enrolled in the Civil Air Patrol, Peace Corps, Youth Conservation Corps, Work Study Programs, or other similar groups.

Employing Agency - Required Codes

Box a (Occupation Code), Box b (Type Code), Box c (Source Code), OSHA Site Code

The Occupational Safety and Health Administration (OSHA) requires all employing agencies to complete these items when reporting an injury. The proper codes may be found in OSHA Booklet 2014, "Recordkeeping and Reporting Guidelines.

OWCP Agency Code

This is a four-digit (or four digit plus two letter) code used by OWCP to identify the employing agency. The proper code may be obtained from your personnel or compensation office, or by contacting OWCP.

Form CA-1
Rev. Apr. 1999

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation

Benefits for Employees under the Federal Employees' Compensation act (FECA)

The FECA, which is administered by the Office of Workers' Compensation Programs (OWCP), provides the following benefits for job-related traumatic injuries:

(1) Continuation of pay for disability resulting from traumatic, job-related injury, not to exceed 45 calendar days. (To be eligible for continuation of pay, the employee, or someone acting on his/her behalf, must file Form CA-1 within 30 days following the injury and provide medical evidence in support of disability within 10 days of submission of the CA-1. Where the employing agency continue's the employee's pay, the pay must not be interrupted unless one of the provision's outlined in 20 CFR 10.222 apply.

(2) Payment of compensation for wage loss after the expiration of COP, if disability extends beyond such point, or if COP is not payable. If disability continues after COP expires, Form CA-7, with supporting medical evidence, must be filed with OWCP. To avoid interruption of income, the form should be filed on the 40th day of the COP period.

(3) Payment of compensation for permanent impairment of certain organs, members, or functions of the body (such as loss or loss of use of an arm or kidney, loss of vision, etc.), or for serious defringement of the head, face, or neck.

(4) Vocational rehabilitation and related services where directed by OWCP.

(5) All necessary medical care from qualified medical providers. The injured employee may choose the physician who provides initial medical care. Generally, 25 miles from the place of injury, place of employment, or employee's home is a reasonable distance to travel for medical care.

An employee may use sick or annual leave rather than LWOP while disabled. The employee may repurchase leave used for approved periods. Form CA-7b, available from the personnel office, should be studied BEFORE a decision is made to use leave.

For additional information, review the regulations governing the administration of the FECA (Code of Federal Regulations, Chapter 20, Part 10) or pamphlet CA-810.

Privacy Act

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101, et seq.) (FECA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for and the amount of benefits payable under the FECA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agency which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider issues relating to retention, rehire, or other relevant matters. (4) Information may also be given to other Federal agencies, other government entities, and to private-sector agencies and/or employers as part of rehabilitative and other return-to-work programs and services. (5) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical/vocational rehabilitation, making evaluations for the Office, and for other purposes related to the medical management of the claim. (6) Information may be given to Federal, state and local agencies for law enforcement purposes, to obtain information relevant to a decision under the FECA, to determine whether benefits are being paid properly, including whether prohibited dual payments are being made, and, where appropriate, to pursue salary/administrative offset and debt collection actions required or permitted by the FECA and/or the Debt Collection Act. (7) Disclosure of the claimant's social security number (SSN) or tax identifying number (TIN) on this form is mandatory. The SSN and/or TIN), and other information maintained by the Office, may be used for identification, to support debt collection efforts carried on by the Federal government, and for other purposes required or authorized by law. (8) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision or reduced level of benefits.

Note: This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the FECA.

Receipt of Notice of Injury

This acknowledges receipt of Notice of Injury sustained by
(Name of injured employee)

Which occurred on (Mo., Day, Yr.)

At (Location)

Signature of Official Superior | Title | Date (Mo., Day, Yr.)

*U.S. GPO: 1999-454-845/12704

Form CA-1
Rev. Apr. 1999

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-2, Notice of Occupational Disease and Claim for Compensation

Notice of Occupational Disease and Claim for Compensation

U. S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

Employee: Please complete all boxes 1 - 18 below. Do not complete shaded areas.
Employing Agency (Supervisor or Compensation Specialist): Complete shaded boxes a, b, and c.

1. Name of Employee (Last, First, Middle)
2. Social Security Number
3. Date of birth Mo. Day Yr.
4. Sex
5. Home telephone ( )
6. Grade as of date of last exposure Level Step
7. Employee's home mailing address (Include city, state, and ZIP code)
8. Dependents
   - ☐ Wife, Husband
   - ☐ Children under 18 years
   - ☐ Other
9. Employee's occupation
10. Location (address) where you worked when disease or illness occurred (include City, state, and ZIP code)
11. Date you first became aware of disease or illness Mo. Day Yr.
12. Date you first realized the disease or illness was caused or aggravated by your employment Mo. Day Yr.
13. Explain the relationship to your employment, and why you came to this realization
14. Nature of disease or illness
15. If this notice and claim was not filed with the employing agency within 30 days after date shown above in item #12, explain the reason for the delay.
16. If the statement requested in item I of the attached instructions is not submitted with this form, explain reason for delay.
17. If the medical reports requested in item 2 of attached instructions are not submitted with this form, explain reason for delay.
18. I certify, under penalty of law, that the disease or illness described above was the result of my employment with the United States Government, and that it was not caused by my willful misconduct, intent to injure myself or another person, nor by my intoxication. I hereby claim medical treatment, if needed, and other benefits provided by the Federal Employees' Compensation Act.

    I hereby authorize any physician or hospital (or any other person, institution, corporation, or government, agency) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs (or to its official representative). This authorization also permits any official representative of the Office to examine and to copy any records concerning me.

Signature of employee or person acting on his/her behalf _____ Date

Have your supervisor complete the receipt attached to this form and return it to you for your records.

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided by the FECA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

For sale by the Superintendent of Documents, U.S. Government Printing Office Washington, DC 20402

Form CA-2
Rev. Jan. 1997

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-2, Notice of Occupational Disease and Claim for Compensation

Official Supervisor's Report of Occupational Disease: Please complete information requested below

19. Agency name and address of reporting office (include city, state, and ZIP Code) | OWCP Agency Code

OSHA Site Code

ZIP Code

20. Employee's duty station (Street address and ZIP Code) ZIP Code

21. Regular work hours From: ☐ a.m. ☐ p.m. To: ☐ a.m. ☐ p.m.

22. Regular work schedule ☐ Sun. ☐ Mon. ☐ Tues. ☐ Wed. ☐ Thurs. ☐ Fri. ☐ Sat.

23. Name and address of physician first providing medical care (include city, state, ZIP code)

24. First date medical care received Mo. Day Yr.

25. Do medical reports show employee is disabled for work? ☐ Yes ☐ No

26. Date employee first reported condition to supervisor Mo. Day Yr.

27. Date and hour employee stopped work Mo. Day Yr. Time ☐ a.m. ☐ p.m.

28. Date and hour employee's pay stopped Mo. Day Yr. Time ☐ a.m. ☐ p.m.

29. Date employee was last exposed to conditions alleged to have caused disease or illness Mo. Day Yr.

30. Date returned to work Mo. Day Yr. Time ☐ a.m. ☐ p.m.

31. If employee has returned to work and work assignment has changed, describe new duties

32. Employee's Retirement Coverage ☐ CSRS ☐ FERS ☐ Other, (Specify)

33. Was injury caused by third party? ☐ Yes ☐ No If "No," go to Item 34.

34. Name and address of third party (include city, state, and ZIP code)

35. A supervisor who knowingly certifies to any false statement, misrepresentation, concealment of fact, etc., in respect to this claim may also be subject to appropriate felony criminal prosecution.

I certify that the information given above and that furnished by the employee on the reverse of this form is true to the best of my knowledge with the following exception:

Name of Supervisor (Type or print)

Signature of Supervisor Date

Supervisor's Title Office phone

Form CA-2
Rev.Jan.1997

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-2, Notice of Occupational Disease and Claim for Compensation

The FECA, which is administered by the Office of Workers' Compensation Programs (OWCP), provides the following general benefits for employment-related occupational disease or illness:

(1) Full medical care from either Federal medical officers and hospitals, or private hospitals or physicians of the employee's choice.

(2) Payment of compensation for total or partial wage loss.

(3) Payment of compensation for permanent impairment of certain organs, members, or functions of the body (such as loss or loss of use of an arm or kidney, loss of vision, etc.), or for serious disfigurement of the head, face, or neck.

(4) Vocational rehabilitation and related services where necessary.

The first three days in a non-pay status are waiting days, and no compensation is paid for these days unless the period of disability exceeds 14 calendar days, or the employee has suffered a permanent disability. Compensation for total disability is generally paid at the rate of 2/3 of an employee's salary if there are no dependents, or 3/4 of salary if there are one or more dependents.

An employee may use sick or annual leave rather than LWOP while disabled. The employee may repurchase leave used for approved periods. Form CA-7b, available from the personnel off ice, should be studied BEFORE a decision is made to use leave.

If an employee is in doubt about compensation benefits, the OWCP District Office servicing the employing agency should be contacted. (Obtain the address from your employing agency.)

For additional information, review the regulations governing the administration of the FECA (Code of Federal Regulations, Title 20, Chapter 1) or Chapter 810 of the Office of Personnel Management's Federal Personnel Manual.

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101, et seq.) (FECA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for and the amount of benefits payable under the FECA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agency which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider issues relating to retention, rehire, or other relevant matters. (4) Information may also be given to other Federal agencies, other government entities, and to private-sector agencies and/or employers as part of rehabilitative and other return-to-work programs and services. (5) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical/vocational rehabilitation, making evaluations for the Office, and for other purposes related to the medical management of the claim. (6) Information may be given to Federal, state and local agencies for law enforcement purposes, to obtain information relevant to a decision under the FECA, to determine whether benefits are being paid properly, including whether prohibited dual Payments are being made, and, where appropriate, to pursue salary/administrative offset and debt collection actions required or permitted by the FECA and/or the Debt Collection Act. (7) Disclosure of the claimant's social security number (SSN) or tax identifying number (TIN) on this form is mandatory. The SSN and/or TIN, and other information maintained by the Office, may be used for identification, to support debt collection efforts carried on by the Federal government, and for other purposes required or authorized by law. (8) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision or reduced level of benefits.

Note: This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the FECA.

This acknowledges receipt of notice of disease or illness sustained by:
(Name of injured employee)

I was first notified about this condition on (Mo., Day, Yr.)

At (Location)

Signature of Official Superior | Title | Date (Mo., Day, Yr.)

This receipt should be retained by the employee as a record that notice was filed.

Form CA-2

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-2, Notice of Occupational Disease and Claim for Compensation

INSTRUCTIONS FOR COMPLETING FORM CA-2

Complete all items on your section of the form. If additional space is required to explain or clarify any point, attach a supplemental statement to the form. in addition to the information requested on the form, both the employee and the supervisor are required to submit additional evidence as described below. If this evidence is not submitted along with the form, the responsible party should explain the reason for the delay and state when the additional evidence will be submitted.

Complete items 1 through 18 and submit the form to the employee's supervisor along with the statement and medical reports described below. Be sure to obtain the Receipt of Notice of Disease or Illness completed by the supervisor at the time the form is submitted.

1) Employee's statement

In a separate narrative statement attached to the form, the employee must submit the following information:

a) A detailed history of the disease or illness from the date it started.

b) Complete details of the conditions of employment which are believed to be responsible for the disease or illness.

c) A description of specific exposures to substances or stressful conditions causing the disease or illness, including locations where exposure or stress occurred, as well as the number of hours per day and days per week of such exposure or stress.

d) Identification of the part of the body affected. (If disability is due to a heart condition, give complete details of all activities for one week prior to the attack with particular attention to the final 24 hours of such period.)

e) A statement as to whether the employee ever suffered a similar condition. if so, provide full details of onset, history, and medical care received, along with names and addresses of physicians rendering treatment.

2) Medical report

a) Dates of examination or treatment.

b) History given to the physician by the employee.

c) Detailed description of the physician's findings.

d) Results of x-rays, laboratory tests, etc.

e) Diagnosis.

f) Clinical course of treatment.

g) Physician's opinion as to whether the disease or illness was caused or aggravated by the employment, along with an explanation of the basis for this opinion. (Medical reports that do not explain the basis for the physician's opinion are given very little weight in adjudicating the claim.)

3) Wage loss

If you have lost wages or used leave for this illness, Form CA-7 should also be submitted.

At the time the form is received, complete the Receipt of Notice of Disease or Illness and give it to the employee. In addition to completing items 19 through 34, the supervisor is responsible for filling in the proper codes in shaded boxes a, b, and c on the front of the form. If medical expense or lost time is incurred or expected, the completed form must be sent to OWCP within ten working days after it is received. In a separate narrative statement attached to the form, the supervisor must:

a) Describe in detail the work performed by the employee. Identify fumes, chemicals, or other irritants or situations that the employee was exposed to which allegedly caused the condition. State the nature, extent, and duration of the exposure, including hours per days and days per week, requested above.

b) Attach copies of all medical reports (including x-ray reports and laboratory data) on file for the employee.

c) Attach a record of the employee's absence from work caused by any similar disease or illness. Have the employee state the reason for each absence.

d) Attach statements from each co-worker who has first-hand knowledge about the employee's condition and its cause. (The co-workers should state how such knowledge was obtained.)

e) Review and comment on the accuracy of the employee's statement requested above.

The supervisor should also submit any other information or evidence pertinent to the merits of this claim.

14. Nature of the disease or illness
Give a complete description of the disease or illness. Specify the left or right side if applicable (e.g., rash on left leg; carpal tunnel syndrome, right wrist).

19. Agency name and address of reporting office
The name and address of the off ice to which correspondence from OWCP should be sent (if applicable, the address of the personnel or compensation office).

23. Name and address of physician first providing medical care
The name and address of the physician who first provided medical care for this injury. If initial care was given by a nurse or other health professional (not a physician) in the employing agency's health unit or clinic, indicate this on a separate sheet of paper.

24. First date medical care received
The date of the first visit to the physician listed in item 23.

32. Employee's Retirement Coverage.
Indicate which retirement system the employee is covered under.

33. Was the injury caused by third party?
A third party is an individual or organization (other than the injured employee or the Federal government) who is liable for the disease. For instance, manufacturer of a chemical to which an employee was exposed might be considered a third party if improper instructions were given by the manufacturer for use of the chemical.

Box a (Occupational Code), Box b. (Type Code), Box c (Source Code), OSHA Site Code
The Occupational Safety and Health Administration (OSHA) requires all employing agencies to complete these items when reporting an injury. The proper codes may be found in OSHA Booklet 2014, Record Keeping and Reporting Guidelines.

OWCP Agency Code
This is a four digit (or four digit two letter) code used by OWCP to identify the employing agency. The proper code may be obtained from your personnel or compensation office, or by contacting OWCP.

• U.S. GPO: 2001480-204/59062

Form CA-2
Rev.Jan.1997

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-7, Claim for Compensation

Claim for Compensation

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

SECTION 1 **EMPLOYEE PORTION**

a. Name of Employee Last First Middle

OMB No. 1215-0103
Expires: 08/31/2005

b. Mailing Address (*Including City State, ZIP Code*)

c. OWCP File Number

d. Date of Injury Month Day Year

e. Social Security Number

E-Mail Address *(Optional)*

f. Telephone No./FAX No.

SECTION 2 Compensation is claimed for:

	Inclusive Date Range From	To	Intermittent?	
a. ☐ Leave without pay			☐ Yes ☐ No	*Go to Section 3*
b. ☐ Leave buy back			☐ Yes ☐ No	*Go to Section 3, and Complete Form CA-7b*
c. ☐ Other wage loss; specify type, such as downgrade, loss of night differential, etc. Type:			☐ Yes ☐ No	*Go to Section 3*
d. ☐ Schedule Award (*Go to Section 4*)			If intermittent, complete Form CA-7a, Time Analysis Sheet	

SECTION 3 Have you worked outside your federal job during the period(s) claimed in Section 2? (*Include salaried, self-employed, commission, volunteer, etc.*)

☐ Yes Name and Address of Business:

☐ No *Go to section 4*

Name Address City State ZIP Code

Dates Worked: Type of Work:

SECTION 4 Is this the first CA-7 claim for compensation you have filed for this injury?

☐ Yes *Complete Sections 5 through 7 and a Form SF-1199A, "Direct Deposit Sign-up"*

☐ No Has there been any change in your dependents, or has your direct deposit information changed, or has there been a claim filed with U.S. Civil Service Retirement, another federal retirement or disability law, or with the Department of Veterans Affairs since your last CA-7 claim?

☐ Yes - *Complete Sections 5 through 7 or a new SF-1199A to reflect change(s)* ☐ No - *Complete Section 7*

SECTION 5 List your dependents (*including spouse*):

Name	Social Security #	Date of Birth	Relationship	Living with you? Yes	No
				☐	☐
				☐	☐
				☐	☐

For dependents not living with you, complete items a and b below.

a. Are you making support payments for a dependent shown above? ☐ Yes ☐ No If Yes, support payments are made to:

Name Address City State ZIP Code

b. Were support payments ordered by a court? ☐ Yes ☐ No If Yes, attach copy of court order.

SECTION 6 a. Was/Will there be a claim made against a 3rd party? ☐ Yes ☐ No

b. Have you ever applied for or received disability benefits from the Department of Veterans Affairs?

☐ Yes ☐ No	Claim Number	Full Address of VA Office Where Claim Filed	Nature of Disability and Monthly Payment

c. Have you applied for or received payment under any Federal Retirement or Disability law?

☐ Yes ☐ No	Claim Number	Date Annuity Began	Amount of Monthly Payment	Retirement System (CSRS, FERS, SSA, Other)
				☐CSRS ☐FERS ☐SSA ☐Other

SECTION 7 I hereby make claim for compensation because of the injury sustained by me while in the performance of my duty for the United States. I certify that the information provided above is true and accurate to the best of my knowledge and belief.

Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud, to obtain compensation as provided by the FECA, or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment, or both. In addition, a felony conviction will result in termination of all current and future FECA benefits.

Employee's Signature _____ Date (*Mo., day, year*) _____

Form CA-7
Rev. Nov. 1999

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-7, Claim for Compensation

Employing Agency Portion
For first CA-7 claim sent, complete sections 8 through 15.
For subsequent claims, complete sections 12 through 15 only.

SECTION 8 Show Pay Rate as of Date of Injury: Base Pay

Date: _____ $_____ per _____ Grade: _____ Step: _____

Additional Pay Type _____ $_____ per _____

Additional Pay Type _____ $_____ per _____

Additional Pay Type _____ $_____ per _____

Date Employee Stopped Work:

Date: _____ $_____ per _____ Grade: _____ Step: _____

Type _____ $_____ per _____

Type _____ $_____ per _____

Type _____ $_____ per _____

Additional pay types include, but are not limited to: Night Differential (ND), Sunday Premium (SP), Holiday Premium (HP), Subsistence (SUB), Quarter (QTR), etc. (List each separately)

SECTION 9

a. Does employee work a fixed 40-hour per week schedule? Yes ☐ No ☐

1. If Yes, circle scheduled days: ☐ S ☐ M ☐ T ☐ W ☐ TH ☐ F ☐ S

2. If No, show scheduled hours for the two week pay period in which work stopped. Circle the day that work stopped.

FOR EXAMPLE ONLY

	S	M	T	W	TH	F	S
WEEK 1 From 5/14 to 5/20		8	4	6	(6)		
WEEK From 5/21 to 5/27		8		6	6		4

	S	M	T	W	TH	F	S
WEEK 1 From _____ to _____							
WEEK 2 From _____ to _____							

b. Did employee work in position for 11 months prior to injury? ☐ Yes ☐ No

If No, would position have afforded employment for 11 months but for the injury? ☐ Yes ☐ No

SECTION 10 On date pay stopped, was employee enrolled in:

a. Health Benefits under the FEHBP? ☐ No ☐ Yes Code _____

b. Basic Life Insurance? ☐ No ☐ Yes

c. Optional Use Insurance? ☐ No ☐ Yes Class _____ *(D-Z only)*

d. A Retirement System? ☐ No ☐ Yes Plan _____ *(Specify CSRS, FERS, Other)*

SECTION 11 Continuation of Pay (COP) Received (*Show inclusive dates*):

From _____ To _____

Intermittent? ☐ Yes — Complete Time Analysis Sheet, Form CA-7a ☐ No

SECTION 12 Show pay status and inclusive dates for period(s) claimed:

			Intermittent?	
Sick Leave	From _____	To _____	☐ Yes ☐ No	If intermittent, complete Form CA-7a, Time Analysis Sheet.
Annual Leave	From _____	To _____	☐ Yes ☐ No	
Leave without Pay	From _____	To _____	☐ Yes ☐ No	If leave buy back, also submit completed Form CA-7b.
Work	From _____	To _____	☐ Yes ☐ No	

SECTION 13 Did employee return to work? ☐ Yes ☐ No

If Yes, date _____

If returned, did employee return to the pre-date-of-injury job, with the same number of hours and the same duties?

☐ Yes ☐ No If No, explain:

SECTION 14 Remarks:

SECTION 15 An employing agency official who knowingly certifies to any false statement, misrepresentation, or concealment of fact, with respect to this claim may also be subject to appropriate felony criminal prosecution.

I certify that the information given above and that furnished by the employee on this form is true to the best of my knowledge, with any exceptions noted in Section 14, Remarks, above.

Signature _____ *(Agency Official)* Title _____ Date ___/___/___

Name of Agency _____

If OWCP needs specific pay information, the person who should be contacted is:

Name _____ Title _____

Telephone No. _____ Fax No. _____ E-Mail Address _____

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-7, Claim for Compensation

INSTRUCTIONS FOR COMPLETING FORM CA-7

If the employee does not quality for continuation of pay (for 45 days), the form should be completed and filed with the OWCP as soon as pay stops. The form should also be submitted when the employee reaches maximum improvement and claims a schedule award. If the employee is receiving continuation of pay and will continue to be disabled after 45 days, the form should be filed with OWCP 5 working days prior to the end of the 45-day period.

The CA-7 also should be used to claim continuing compensation, when a previous CA-7 claim has been made.

Collection of this information is required to obtain a benefit and is authorized by 20 C.F.R.10.106.

EMPLOYEE (or person acting on the employee's behalf) - Complete sections 1 through 7 as directed and submit the form to the employee's supervisor.

SUPERVISOR (or appropriate official in the employing agency) - Complete sections 8 through 15 as directed and promptly forward the form OWCP.

EXPLANATIONS - Some of the items on the form which may require further clarification are explained below:

Section Number	Explanation
2d. Schedule Award	Schedule awards are paid for permanent impairment to a member or function of the body.
5. List your dependents	Your wife or husband is a dependent if he or she is living with you. A child is a dependent if he, or she either lives with you or receives support payments from you, and he or she: 1) is under 18, or 2) is between 18 and 23 and is a full-time student, or 3) is incapable of self-support due to physical or mental disability.
6a. Was/will there be a claim made against 3rd party?	A third party is an individual or organization (other than the injured employee or the Federal government) who is liable for the injury. For instance, the driver of a vehicle causing an accident in which an employee is injured, the owner of a building where unsafe conditions cause an employee to fall, and a manufacturer who gave improper instructions for the use of a chemical to which an employee is exposed, could all be considered third parties to the injury.
8. Additional Pay	"Additional Pay" includes night differential, Sunday premium, holiday premium, and any other type (such as hazardous duty or "dirty work" pay) regularly received by the employee, but does not include pay for overtime. If the amount of such pay varies from pay period to pay period (as in the case of holiday premium or a rotating shift), then the total amount of such pay earned during the year immediately prior to the date of injury or the date the employee stopped work (whichever is greater) should be reported.
11. Continuation of pay (COP) received	If the injury was not a traumatic injury reported on Form CA-1, this item does not apply.
14. Remarks	This space is used to provide relevant information which is not present else- where on the form.

The authority for requesting this information is 5 U.S.C. 8101 et seq. The information will be used to determine entitlement to benefits. Furnishing the requested information is required for the claimant to obtain or retain a benefit. Information collected will be handled and stored in compliance with the Freedom of Information Act, the Privacy Act of 1974, as amended (5 U.S.C. 552a). Failure to furnish the requested information may delay the process, or result in an unfavorable decision or a reduced benefit.

Public Burden Statement

Public reporting burden forth is collection of information is estimated to average 13 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the Department of Labor, Office of Workers' Compensation Programs, Room S-3229, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-17, Claim for Compensation

Duty Status Report

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

This form is provided for the purpose of obtaining a duty status report for the employee named below. This request does not constitute authorization for payment of medical expense by the Department of Labor, nor does it invalidate any previous authorization issued in this case. This request for information is authorized by law (5 USC 8101 et seq.) and is required to obtain or retain a benefit. Information collected will be handled and stored in compliance with the Freedom of Information Act, the Privacy Act of 1974 and the OMB Cir. A-108. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OMB No. 1215-0103
Expires: 08-31-05

OWCP File Number
(If known)

SIDE A - Supervisor: Complete this side and refer to physician

1. Employee's Name (Last, first, middle)

2. Date of Injury (Month, day, yr.) | 3. Social Security No.

4. Occupation

5. Describe How the Injury Occurred and State Parts of the Body Affected

6. The Employee Works
Hours Per Day Days Per Week

7. Specify the Usual Work Requirements of the Employee. Check Whether Employee Performs These Tasks or is Exposed Continuously or intermittently, and Give Number of Hours.

Activity	Continuous	Intermittent	
a. Lifting/Carrying: State Max Wt.	#lbs.	#lbs.	Hrs Per Day
b. Sitting			Hrs Per Day
c. Standing			Hrs Per Day
d. Walking			Hrs Per Day
e. Climbing			Hrs Per Day
f. Kneeling			Hrs Per Day
g. Bending/Stooping			Hrs Per Day
h. Twisting			Hrs Per Day
i. Pulling/Pushing			Hrs Per Day
j. Simple Grasping			Hrs Per Day
k. Fine Manipulation (includes keyboarding)			Hrs Per Day
l. Reaching above Shoulder			Hrs Per Day
m. Driving a Vehicle (Specify)			Hrs Per Day
n. Operating Machinery (Specify)			Hrs Per Day
o. Temp. Extremes			range in degrees F
p. High Humidity			Hrs Per Day
q. Chemicals, Solvents, etc. (Identify)			Hrs Per Day
r. Fumes/Dust (identify)			Hrs Per Day
s. Noise (Give dBA)			dBA Hrs Per Day

t. Other (Describe)

SIDE B - Physician: Complete this side

8. Does the History of Injury Given to You by the Employee Correspond to that Shown in Item 5? ☐ Yes ☐ No (If not, describe)

9. Description of Clinical Findings

10. Diagnosis Due to Injury | 11. Other Disabling Conditions

12. Employee Advised to Resume Work?
☐ Yes, Date Advised _____ ☐ No

13. Employee Able to Perform Regular Work Described on Side A?
☐ Yes, If so ☐ Full-Time or ☐ Part-Time _____ Hrs Per Day
☐ No, If not, complete below:

	Continuous	Intermittent	
a. Lifting/Carrying: State Max Wt.	#lbs.	#lbs.	Hrs Per Day
b. Sitting			Hrs Per Day
c. Standing			Hrs Per Day
d. Walking			Hrs Per Day
e. Climbing			Hrs Per Day
f. Kneeling			Hrs Per Day
g. Bending/Stooping			Hrs Per Day
h. Twisting			Hrs Per Day
i. Pulling/Pushing			Hrs Per Day
j. Simple Grasping			Hrs Per Day
k. Fine Manipulation (includes keyboarding)			Hrs Per Day
l. Reaching above Shoulder			Hrs Per Day
m. Driving a Vehicle (Specify)			Hrs Per Day
n. Operating Machinery (Specify)			Hrs Per Day
o. Temp. Extremes			range in degrees F
p. High Humidity			Hrs Per Day
q. Chemicals, Solvents, etc. (Identify)			Hrs Per Day
r. Fumes/Dust (identify)			Hrs Per Day
s. Noise (Give dBA)			dBA Hrs Per Day

14. Are Interpersonal Relations Affected Because of a Neuropsychiatric Condition? (e.g. Ability to Give or Take Supervision, Meet Deadlines, etc.) ☐ Yes ☐ No (Describe)

15. Date of Examination | 16. Date of Next Appointment

17. Specialty | 18. Tax Identification Number

19. Physician's Signature | 20. Date

Form CA-17
Rev. Jan. 1997

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-17, Duty Status Report

INSTRUCTIONS FOR COMPLETING DUTY STATUS REPORT (CA-17)

SUPERVISOR: Complete Side A and refer the form to the physician to complete Side B. Fill in the address of the Employing Agency and the appropriate OWCP District Office in the spaces below. Enter the OWCP file number in the top right corner.

PHYSICIAN: Complete Side B, sign and return to the employing agency within 2 days to prevent interruption of the employee's income. Fill in your name and address.

Medical Facility Name and Address

Send Original Report to:

Employing Agency Address

Send a Copy of This Report to:

OFFICE OF WORKERS' COMPENSATION PROGRAMS

CERTIFICATION: BY SIGNING BLOCK 19 ON THE FRONT OF THIS FORM, THE PHYSICIAN CERTIFIES AS FOLLOWS:

I CERTIFY THAT ALL THE STATEMENTS IN RESPONSE TO THE QUESTIONS ASKED ON THIS FORM CA-17 ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE. FURTHER, I UNDERSTAND THAT ANY KNOWINGLY FALSE OR MISLEADING STATEMENT, OR MISREPRESENTATION OR CONCEALMENT OF MATERIAL FACT, MAY SUBJECT ME TO FELONY CRIMINAL PROSECUTION.

I FURTHER UNDERSTAND THAT THIS REQUEST DOES NOT CONSTITUTE AUTHORIZATION FOR PAYMENT OF MEDICAL EXPENSES BY THE DEPARTMENT OF LABOR, NOR DOES IT INVALIDATE ANY PREVIOUS AUTHORIZATION ISSUED IN THIS CASE.

Public Burden Statement

We estimate that it will take an average of 5 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the OWCP, U.S. Department of Labor, Room S-3229, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

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G. P. O. - 2000 - 188-099

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-20, Attending Physician's Report

Attending Physician's Report

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

1. Patient's name Last First Middle	2. Date of Injury mo, day yr.	3. OWCP File Number	OMB No. 1215-0103 Expires: 08-31-05

4. What history of injury (including disease) did patient give you?

5. Is there any history or evidence of concurrent or pre-existing injury or disease or physical impairment? (If yes, please describe) ☐ Yes ☐ No — ICD-9 Code

6. What are your findings? (Include results of X-Rays, laboratory reports, etc.)

7. What is your diagnosis? — ICD-9 Code

8. Do you believe the condition found was caused or aggravated by an employment activity? (Please explain answer) ☐ Yes ☐ No

9. Did injury require hospitalization? If no, go to item # 13 ☐ Yes ☐ No	10. Date of admission mo, day yr.	11. Date of discharge mo, day yr.	12. Additional Hospitalization required If Yes, describe in "Remarks" (Item 25) ☐ Yes ☐ No

13. What treatment did you receive?

14. Date of first examination mo, day yr.	15. Date(s) of treatment: mo, day yr. mo, day yr. mo, day yr.	16. Date of discharge from treatment mo. day yr.

17. Period of total disability From mo. day yr. Thru mo, day yr.	18. Period of Partial Disability From mo. day yr. Thru mo. day yr.	19. Date employee able to resume light work mo, day yr.

20. Date employee is able to resume regular work mo, day yr.	21. Has employee been advised that he/she can return to work? ☐ Yes ☐ No	22. If yes, on what date was he/she advised? mo, day yr.

23. If employee is able to resume only light work, indicate the extent of physical limitations and the type of work that could reasonably be performed with these limitations. (Continue in item #25 if necessary.)	24. Are any permanent effects expected as a result of this injury? If yes, describe in item #25. ☐ Yes ☐ No

25. Remarks

26. If you have referred the employee to another physician provide the following: Name / Address / City State ZIP	Specialty / 27. What was the reason for this referral? ☐ Consultation ☐ Treatment

28. I certify that the statements in response to the questions asked above are true, complete and correct to the best of my knowledge. Further, I understand that any false or misleading statements or any misrepresentation or concealment of material fact which is knowingly made may subject me to felony criminal prosecution.

Signature of Physician _____ Date _____

29. Name of Physician / Address / City State ZIP	30. Tax ID Number / 31. Do you specialize? ☐ Yes ☐ No / 32. If yes, indicate specialty

Form CA-20
Rev. Nov. 1999

8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-20, Attending Physician's Report

IMPORTANT: A MEDICAL REPORT IS REQUIRED BY THE OFFICE OF WORKERS' COMPENSATION PROGRAMS BEFORE PAYMENT OF COMPENSATION FOR LOSS OF WAGES OR PERMANENT DISABILITY CAN BE MADE TO THE EMPLOYEE. THIS INFORMATION IS REQUIRED TO OBTAIN OR RETAIN A BENEFIT (5 USC 8101 et seq.).

IF YOU HAVE SUBMITTED A NARRATIVE MEDICAL REPORT OR A FORM CA-16 TO OWCP WITHIN THE PAST 10 DAYS, YOU NEED NOT SUBMIT THIS FORM CA-20.

OWCP REQUIRES THAT MEDICAL BILLS, OTHER THAN HOSPITAL BILLS, BE SUBMITTED ON THE AMERICAN MEDICAL ASSOCIATION HEALTH INSURANCE CLAIM FORM, HCFA 1500/OWCP-1500a.

INSTRUCTIONS TO PHYSICIAN FOR COMPLETING ATTENDING PHYSICIAN'S REPORT

1. COMPLETE THE ENTRIES 1-32 ON THE FORM; AND
2. IF DISABILITY HAS NOT TERMINATED, INDICATE IN ITEM 17; AND
3. SEND THE FORM AND YOUR BILL TO:

OFFICE OF WORKERS' COMPENSATION PROGRAMS

Public Burden Statement

We estimate that it will take an average of 5 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S-3229, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE

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8 Benefits (Continued):

B. Office of Workers' Compensation (OWCP) (Continued)

Form CA-20, Attending Physician's Report

FORM CA-20, PHYSICIAN'S REPORT

Compensation for wage loss cannot be paid unless medical evidence has been submitted supporting disability for work during the period claimed. For claims based on traumatic injury and reported on Form CA-1, the employee should detach Form CA-20, complete items 1-3 on the front, and print the OWCP district office address on the reverse. The form should be promptly referred to the attending physician for early completion. If the claim is for occupational disease, filed on Form CA-2, a medical report as described in the instructions accompanying that form is required in most cases. The employee should bring these requirements to the physician's attention. It may be necessary for the physician to provide a narrative medical report in place of or in addition to Form CA-20 to adequately explain and support the relationship of the disability to the employment.

For payment of a schedule award, the claimant must have a permanent loss or loss of function of one of the members of the body or organs enumerated in the regulations (20 C.F.R. 10.304). The attending physician must affirm that maximum medical improvement of the condition has been reached and should describe the functional loss and the resulting impairment in accordance with the American Medical Association Guides to the Evaluation of Permanent Impairment.

PRIVACY ACT

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101, et seq.) (FECA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for and the amount of benefits payable under the FECA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agency which employed the claimant at the time of injury in order to verity statements made, answer questions concerning the status of the claim, verify billing, and to consider issues relating to retention, rehire, or other relevant matters. (4) Information may also be given to other Federal agencies, other government entities, and to private-sector agencies and/or employers as part of rehabilitative and other return-to-work programs and services. (5) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical/vocational rehabilitation, making evaluations for the Office, and for other purposes related to the medical management of the claim. (6) Information may be given to Federal, state and local agencies for law enforcement purposes, to obtain information relevant to a decision under the FECA, to determine whether benefits are being paid properly, including whether prohibited dual payments are being made, and, where appropriate, to pursue salary/administrative offset and debt collection actions required or permitted by the FECA and/or the Debt Collection Act. (7) Disclosure of the claimant's social security number (SSN) or tax identifying number (TIN) on this form is mandatory. The SSN and/or TIN, and other information maintained by the Office, may be used for identification, to support debt collection efforts carried on by the Federal government, and for other purposes required or authorized by law. (8) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision or reduced level of benefits.

Note: This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim filed under the FECA.

8 Benefits (Continued):

C. Leave Donor Program

Introduction

The Leave Transfer Program (LTP) is a program through which an employee donates unused, accrued annual leave (donor) to another employee to use during a medical or family emergency (recipient). A medical emergency is an involuntary medical condition of an employee or his/her family member which is likely to require an employee's absence from duty for a prolonged period of time and result in loss of income to the employee because of lack of paid leave.

Recipient Eligibility and Application

To be eligible as a recipient in LTP, it must be determined that the:

- medical emergency is of a personal nature or that of a family member
- absence would result in unpaid leave for a minimum of 24 hours
- employee has exhausted all earned:
  - annual and sick leave to qualify for a personal medical emergency
  - available sick leave entitlement under the SLFC regulations and their annual leave to qualify for a family medical emergency
- documentation justifying the medical emergency was received and must:
  - be on doctor's or hospital's letterhead
  - be signed and dated by practicing doctor
  - include the beginning date of the medical emergency and the approximate date the emergency should end.
  - include a diagnosis or prognosis of the employee's or family member's condition.
  - include completed and signed form AD-1046 and appropriate medical documentation; give to immediate supervisor for concurrence and forward to the Human Resources Leave Transfer Coordinator.

Supervisor's Responsibilities

The applicant's immediate supervisor:

- shall review, concur and return application (AD-1046) and the associated medical documents to the employee
- shall monitor the use of donated leave by an approved leave recipient
- shall forward questionable recipient requests to the Human Resources Leave Share Coordinator with an explanation of their concerns

8 Benefits (Continued):

C. Leave Donor Program (Continued)

Timekeeper's Responsibilities

Timekeepers shall:

- ensure donated leave is only applied to those hours related to the recipient's current medical emergency
- track the recipient's donated leave separate from the regular leave
- attached leave transfer documents to the employee's T&A for the pay period
- make appropriate leave adjustments to the recipient's and donor's T&A records
- provide the servicing personnel office with a leave audit, if requested.

Leave Donor Requirements

Employees wanting to donate annual leave to an approved recipient shall:

- obtain and complete form AD-1043, specifying the number of accrued annual leave hours to be transferred to the recipient
- donate annual leave in 1-hours increments
- sign and date the AD-1043
- forward the AD-1043 to the Human Resources Leave Transfer Coordinator.

NOTE: Forms AD-1046 and AD-1043 can be accessed online on FFAS Employee Forms Website: http://intranet.fsa.usda.gov/fsa/

8 Benefits (Continued):

C. Leave Donor Program (Continued)

AD-1043, Leave Transfer Program – Donor Application

LEAVE TRANSFER PROGRAM - DONOR APPLICATION

FOR PERSONNEL USE ONLY:
CASE NUMBER

INSTRUCTIONS: Use this form to request the transfer of earned annual leave to an approved leave recipient under P.L. 100-566. You may not transfer leave to your immediate supervisor. After completion, forward it to the office in your agency designated to approve leave donations.

PART I - COMPLETED BY DONOR

1. NAME OF DONOR *(Last, First, Middle Initial)*		2. POSITION TITLE
3. SOCIAL SECURITY NUMBER	4. SERIES, GRADE, OR PAY LEVEL	5. ORGANIZATIONAL TITLE *(Agency, Division, Branch Section)*
6. OFFICE ADDRESS		7. OFFICE TELEPHONE NO.
8. NAME OF TIMEKEEPER	9. TELEPHONE NO. OF TIMEKEEPER	10. OFFICE ADDRESS OF TIMEKEEPER

INSTRUCTIONS: Please review the information below. You may not transfer more than 1/2 of the annual leave you will earn during this calendar year unless a waiver is approved. To request a waiver, you must attach a statement as to why your situation is unusual.

If you will be employed full-time by the federal government for the full calendar year, the limits are as follows:

- 52 hours for employees in the 4-hour leave earning category.
- 78 hours for employees in the 6-hour leave earning category, or
- 104 hours for employees in the 8-hour leave earning category.

If you are a part-time employee or if you will not be employed for the full calendar year, you may compute your transfer limit using the appropriate formula below:

- Limit for part-time employee = **13 X** $\frac{\text{Duty hours in Pay Period}}{\mathbf{80}}$ **X** leave earning category
- Limit for part-year employee = $\frac{\text{Number of Pay Periods to be worked}}{\mathbf{2}}$ **X** leave earning category

11. NUMBER OF HOURS OF ANNUAL LEAVE TO BE TRANSFERRED	12. NAME OF RECIPIENT	13. CASE NUMBER	14. SOCIAL SECURITY NUMBER OF RECIPIENT *(if known)*
15. ORGANIZATIONAL LOCATION OF RECIPIENT *(Agency, Division, Branch, Section)*		16. OFFICE ADDRESS OF RECIPIENT	
17. NAME OF LEAVE SHARE COORDINATOR	18. TELEPHONE NO. OF LEAVE SHARE COORDINATOR	19. OFFICE ADDRESS OF LEAVE SHARE COORDINATOR	

CERTIFICATION OF VOLUNTARY DONATION: *I certify that I am making this donation entirely of my own free will and that no attempts have been made to coerce me to donate annual leave. I understand that except for any leave unused by the recipient, I have no right under my circumstances (including a medical emergency of my own) to have any of the donated leave restored.*

SIGNATURE OF DONOR	DATE

PART II - AGENCY REVIEW AND APPROVAL

1. CURRENT ANNUAL LEAVE BALANCE *(in hours)*	AS OF PAY PERIOD NUMBER	2. ANNUAL LEAVE CATEGORY PER PAY PERIOD

APPLICATION APPROVED:

☐ YES (This application meets all criteria required for annual leave transfer by law, regulation and Department policy. Transferred leave may be credited to the recipient's account effective Pay Period Number): _____

☐ NO *(state reason for disapproval):*

SIGNATURE OF APPROVING OR DISAPPROVING OFFICIAL	TITLE	OFFICE TELEPHONE NO.	DATE

PRIVACY ACT STATEMENT

§ U.S.C. 6311 authorizes collection of this information. Your social security number is requested solely for the purpose of positively identifying leave donors so that donated leave can be deducted from the proper account. Although the disclosure of this information is voluntary, failure to furnish this information may result in disapproval of this application.

AD-1043
(Rev. 4/89)

8 Benefits (Continued):

C. Leave Donor Program (Continued)

AD-1046, Leave Transfer Program – Recipient Application

This form is available electronically.

LEAVE TRANSFER PROGRAM - RECIPIENT APPLICATION

FOR PERSONNEL USE ONLY: CASE NUMBER

INSTRUCTIONS: Use this form to apply to be a leave recipient under P.L. 100-566. Attach to this form a brief description of the nature and severity of the medical emergency and appropriate documentation of the medical emergency: a physician's certificate, the medical prognosis and anticipated duration of the condition. After completing this form, forward through your supervisor to the office in your agency designated to approve leave recipients. **Approval as a leave recipient does not guarantee that leave will be donated. Donor employees will designate the recipient of their leave.**

PART I - APPLICATION AND CERTIFICATION (*To be completed by the applicant or another employee on his or her behalf)*

1. NAME OF RECIPIENT *(Last, First, Middle Initial)*		2. POSITION TITLE	3. SOCIAL SECURITY NUMBER
4. SERIES, GRADE OR PAY LEVEL	5. DUTY STATION	6. ORGANIZATIONAL TITLE *(Agency, Division, Branch Section)*	
7. OFFICE ADDRESS		8. OFFICE TELEPHONE NO.	9. HOME TELEPHONE NO.

10. NAME OF TIMEKEEPER	11. TELEPHONE NO. OF TIMEKEEPER	12. OFFICE ADDRESS OF TIMEKEEPER

13. T&A CONTACT POINT NO.	14. ANTICIPATED OR ACTUAL DURATION OF MEDICAL EMERGENCY (if known)		15. DATES LEAVE EXHAUSTED		16. AMOUNT OF DONATED LEAVE REQUESTED *(hours, days or months)*
	Beginning Date:	Ending Date:	Annual:	Sick *(if applicable)*:	

17. PLEASE INDICATE HOW YOU PREFER THE ANNUAL LEAVE DONATED TO BE APPLIED BY NUMBERING THE FOLLOWING IN ORDER OF YOUR PREFERENCE. *(Donated annual leave may be applied to retroactively replace leave without pay and/or advanced sick or annual leave in connection with this medical emergency.)*

PLEASE INDICATE PAY PERIOD DONATED ANNUAL LEAVE MAY BE RETROACTIVELY APPLIED

For current use	against advanced annual leave	against advanced sick leave	against LWOP
_____	_____	_____	_____

18. I agree to have my *(please specify)* ☐ case number only ☐ case number, and circumstances only ☐ name, case number and circumstances published for the purpose of receiving donations. If I agree to have my circumstances published, the following 5 lines or less describing my medical emergency will be published exactly as I write it and will be published exactly as I write made available to employees of my agency who which to make donations to me.

CERTIFICATION *(If certifying on behalf of another employee, modify as appropriate.)*

I certify that (1) I have been affected by the medical emergency described in the attachment since the date indicated above, (2) I have or will have exhausted all annual leave and any available sick leave that could otherwise be used as of date indicated above, and (3) expect to be absent from duty without paid leave at least 80 hours because of this medical emergency. I further certify that I am not receiving unemployment benefits or workers' compensation benefits in connection with this medical emergency for which I am requesting transferred annual leave.

SIGNATURE OF RECIPIENT OR HIS OR HER DESIGNEE *(please specify)*: ☐ Recipient ☐ Designee			DATE
CONCURRENCE: SIGNATURE OF SUPERVISOR ☐ Yes ☐ No	TITLE	OFFICE TELEPHONE NO.	DATE

PART II - AGENCY REVIEW AND APPROVAL

1. CURRENT ANNUAL LEAVE BALANCE *(in hours)*	2. CURRENT SICK LEAVE BALANCE *(in hours)*	3. LWOP HOURS USED IN CONJUNCTION WITH THIS EMERGENCY	4. ADVANCED SICK LEAVE HOURS TO DATE	5. ADVANCED ANNUAL LEAVE HOURS TO DATE	6. ANNUAL LEAVE CATEGORY PER PAY PERIOD

APPLICATION APPROVED:

☐ Yes *(If Yes, transferred leave may be credited to the recipient's account effective Pay Period Number):* _____

☐ No *(state reason for disapproval):*

SIGNATURE OF APPROVING OR DISAPPROVING OFFICIAL	TITLE	OFFICE TELEPHONE NO.	DATE

PRIVACY ACT STATEMENT

§ U.S.C. 6311 authorizes collection of this information. Your social security number may be disclosed to leave donors for the purpose of positively identifying leave recipients so that donated leave can be credited to the proper account.

AD-1046
REV(4-89)

8 Benefits (Continued):

D. Employee Assistance Program (EAP)

Employees sometimes face a wide range of issues and concerns (parenting, elder care, relationships, work, financial, legal, stress, alcohol/drug abuse) that could interfere with their quality of life and performance, if these issues and concerns become too much for the employee to handle. Many employees become overwhelmed and do not know where to go for assistance.

FFAS offers professional assistance through EAP to help employees, and family members, handle and resolve issues and concerns.

Professional advice is available 24 hours a day, 7 days a week. It is free and confidential according to the law.

EAP has a highly positive impact on the workplace because it provides benefits for the employee and workforce.

Benefits

EAP provides employees the opportunity to meet with an advisor one-on-one to help cope with and/or resolve a problem that may be too much for the employee to handle and could affect productivity and well-being.

The EAP agreement provides short-term counseling sessions. Employees may obtain the maximum number of sessions stated in the EAP agreement, when necessary, for each new problem.

Accessing Benefits

Federal Occupational Health (FOC) provides the EAP services. EAP may be reached 24 hours a day, 7 days a week by calling 1-800-222-0364 or visit their website at:

www.foh4you.com